

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

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STATE OF OHIO, :

Plaintiff. :

vs. :Case Number B1003262

RUBEN JORDAN, :Appeal Number C1100833

Defendant. :Volume VIII of X

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Seth S. Tieger, Esq.

Megan E. Shanahan, Esq.

On behalf of the State of Ohio.

William P. Whalen, Jr., Esq.

Amy R. Williams, Esq.

On behalf of the Defendant.

BE IT REMEMBERED that upon the Jury

Trial of this cause, on January 24, 2011, before

the Honorable NADINE L. ALLEN, a judge of the

said court, the following proceedings were had,

to wit:

1 PROCEEDINGS, January 24, 2011

2 THE COURT: Good morning. We are  
3 now ready for the closing argument.

4 MR. TIEGER: Yes, Your Honor.

5 THE COURT: And jury instructions,  
6 so we can bring in the jury at this time.  
7 And I would ask everybody who's back  
8 there observing, and for all the  
9 participants to please check your cell  
10 phone right now. There will be no noise  
11 in this courtroom while this is going on.  
12 So, take it and do not have it in your  
13 hands either because we don't allow any  
14 picture taking, texting, e-mails or use  
15 of a cell phone. I do have the authority  
16 to confiscate it and do other things if  
17 there is continued violations of that, so  
18 let me check my own.

19 (The jury entering the courtroom at  
20 9:20 a.m.)

21 THE COURT: You may all be seated.  
22 And, good morning, I'm so glad you all  
23 made it here safely in this weather, and  
24 we appreciate that.

25 At this point, we are going to be

1           hearing the closing argument of each  
2           side, from the prosecution and the  
3           defense, followed by -- and, actually,  
4           the State does have the chance to also  
5           address you in what we call rebuttal  
6           argument, rebuttal closing argument.

7                       Following that will be the  
8           instructions of the jury, and then you  
9           will be deliberating this morning. So,  
10          we'll start with the prosecution. You  
11          ready to proceed?

12                      MS. SHANAHAN: Yes, Your Honor.  
13          Thank you.

14                      May it please the Court, ladies and  
15          gentlemen of the jury: I want to thank  
16          you again on behalf of the State of Ohio  
17          and the defense, the court system in this  
18          case. We really value the time that you  
19          dedicate, the fact that you come down  
20          here and do your duty as jurors.

21                      Please believe us that any delays  
22          in these proceedings, or any time that  
23          you are a juror, they are necessary. We  
24          really do respect your time, and we thank  
25          you and can tell that you pay attention

1 and that you listen. You've heard all of  
2 the facts and all of the evidence, and we  
3 appreciate your attention to this very  
4 important matter.

5 Ladies and gentlemen, at the start  
6 of this case, I read to you the  
7 indictment. The indictment is not  
8 evidence, but it tells you what the  
9 defendant has been charged with. The  
10 Judge is going to tell you all of the  
11 instructions, the law in this case, but I  
12 will tell you now that the burden is on  
13 myself and Mr. Tieger, the State of Ohio,  
14 to prove this case to you beyond a  
15 reasonable doubt.

16 Reasonable doubt means that you use  
17 your reason and common sense. It's very  
18 important in this case that you apply  
19 your reason and common sense while you're  
20 deliberating.

21 Ladies and gentlemen, the defendant  
22 is charged with aggravated murder, that  
23 he purposely and with prior calculation  
24 and design caused the death of Victor  
25 Davis. Those are the elements the Court

1 is going to tell you that the State has  
2 to prove to you beyond a reasonable  
3 doubt. Applying reason and common sense  
4 that Ruben Jordan purposely, and with  
5 prior calculation and design, caused the  
6 death of Victor Davis.

7 Ladies and gentlemen, you're also  
8 going to receive instructions on a lesser  
9 charge, a lesser charge of murder.

10 Murder is all of the same elements of  
11 aggravated murder minus the prior  
12 calculation and design. That's not what  
13 we have in this case, because as the  
14 Judge will tell you, prior calculation  
15 and design does not have a necessary time  
16 period, a definite time period employed.  
17 You don't have to plan something out for  
18 a week, two weeks, three days, one day.  
19 You don't have to write down your plan,  
20 it's just that there was some  
21 forethought, there was thought before he  
22 went and committed this crime.

23 In other words, ladies and  
24 gentlemen, that it wasn't done in the  
25 heat of passion, that you -- we were in a

1 fight and you pulled a gun and shot  
2 somebody, that you had to think about  
3 what you were doing.

4 Certainly, in this case,  
5 considering the facts and evidence that  
6 Ruben Jordan went to the motorcycle club  
7 in search of Victor Davis, that he waited  
8 on him, that he followed him home, that  
9 he crossed that open lot and he shot  
10 Victor Davis three times certainly there  
11 is prior calculation and design. This is  
12 not the lesser count of murder, this is  
13 the count as charged in the indictment of  
14 aggravated murder that Ruben Jordan  
15 purposely, and with prior calculation and  
16 design, caused the death of Victor Davis.

17 There are gun specs on this case.  
18 You're going to be told that the  
19 defendant, if you find he had the gun  
20 under his control, that he used it in the  
21 commission of this crime, he should be  
22 found guilty of gun specs. Clearly, a  
23 gun was used in this case. That's really  
24 not at issue. Victor Davis was murdered  
25 by means of a handgun. You heard the

1           coroner and the crime lab people testify  
2           as to that fact.

3           Count 3 being having weapons under  
4           disability, it's been stipulated to that  
5           the defendant was under a disability. He  
6           has five prior convictions for  
7           drug-related offenses which means he's  
8           under a disability, that he's precluded  
9           from owning or carrying or having or  
10          using a firearm. The fact that he did it  
11          is not stipulated to, but those prior  
12          offenses are stipulated to. So, if you  
13          find that the defendant used a firearm to  
14          kill Victor Davis, then, clearly, he had  
15          a weapon while he was under a disability.

16          Ladies and gentlemen, he,  
17          obviously, knew he had been convicted of  
18          these five prior offenses. He knew he  
19          shouldn't be carrying a gun or using a  
20          gun. What we do know from what's been  
21          presented to you in this case is that on  
22          October 31st, 2008, at 11:27 p.m., Victor  
23          Davis was gunned down outside his home.  
24          He was shot three times, and he died  
25          there in the street.

1           On October 31st, 2008, Ruben Jordan  
2           had been within seven feet of where  
3           Davis's body came to rest after this  
4           violence was inflicted upon him. On  
5           October 31st, 2008, we know that Ruben  
6           Jordan knew that Victor Davis was the  
7           only eyewitness to the murder of Brian  
8           Austin, the murder that Kareem Gilbert,  
9           Ruben Jordan's son, committed.

10           On October 31st, 2008, we know that  
11           Dean Shade heard shots as he laid in his  
12           third and fourth floor apartment above  
13           the street where Victor Davis was gunned  
14           down. We know that Dean Shade looked out  
15           and he saw a bald man, who had the same  
16           build as Ruben Jordan, standing over  
17           Davis's body. That person then turned  
18           and fled across the open lot.

19           Ladies and gentlemen, up to this  
20           point, Victor Davis had lived down there  
21           in Over-the-Rhine, as far as we know,  
22           without any violence being inflicted upon  
23           him. And you're being asked to believe  
24           that it was purely coincidental that two  
25           weeks after being the only eyewitness to



1 a street murder, he, himself, gets  
2 murdered in cold blood, with no apparent  
3 reason there out on the street.

4 But you're expected to believe that  
5 that's purely coincidence. You're  
6 expected to believe that Ruben Jordan was  
7 there 12 hours before, 12 hours, and he  
8 spit right where Victor Davis's body came  
9 to rest after he was brutally murdered.  
10 You're expected to believe that that spit  
11 stayed fresh, even though it had been  
12 laying there for 12 hours on a 72-degree  
13 day. You're expected to believe that  
14 Dean Shade who saw a bald man with the  
15 same build as that man run from the  
16 scene, but it wasn't him, even though his  
17 DNA is right there, even though the  
18 person murdered is the only eyewitness to  
19 his son's crime.

20 You're expected to believe none of  
21 those things happened, that these things  
22 are completely unrelated, that Ruben  
23 Jordan was down there 12 hours before and  
24 spit on the ground just where Victor came  
25 to rest.

1                   But the evidence doesn't stop  
2                   there, ladies and gentlemen, the most  
3                   credible witness of all is Kevin Heard.  
4                   He had no reason to come here and  
5                   testify. He left Cincinnati because he  
6                   had been shot. He left Cincinnati, and  
7                   yet he came back here risking his own  
8                   safety to testify in a case against Ruben  
9                   Jordan. Why? Ask yourself why. What is  
10                  his motive? He's getting no case  
11                  consideration, he's not paid, he's not  
12                  asking for fines to be forgiven, he got  
13                  nothing. He did it because it was the  
14                  right thing to do.

15                 He came back here risking his own  
16                 safety to tell you, ladies and gentlemen,  
17                 that in early 2009, as Kareem Gilbert sat  
18                 locked up in the jail for the murder of  
19                 not only Brian Austin but also Victor  
20                 Davis, that a crackhead who buys from him  
21                 ultimately, we find out his given name  
22                 being Ruben Jordan, that Ruben Jordan  
23                 told him I did something and my son is  
24                 locked up for it. I killed a witness to  
25                 a crime that my son committed. I shot

1           him. That's an awful lot of detail. The  
2           fact that he's freaking out, it's about  
3           March or April of 2009, because his son  
4           is sitting in jail for a crime that he,  
5           himself, committed, that that crime  
6           involved a shooting of an eyewitness to  
7           the murder his son committed.

8                        why, you have to ask yourself,  
9           would Kevin Heard have made that up?  
10          How? More importantly, why would he risk  
11          himself to come here and testify with no  
12          gain? He's a former drug dealer, because  
13          guess what, ladies and gentlemen, you're  
14          smart enough to know that Ruben Jordan  
15          isn't going to walk into Findlay Market  
16          and spill his guts to some homemaker from  
17          Blue Ash who happens to be down there  
18          shopping about murdering an eyewitness so  
19          that his son could get off.

20                       Ladies and gentlemen, birds of a  
21          feather. Ruben Jordan is a crackhead.  
22          He hangs around crack dealers. Kevin  
23          Heard is a crack dealer. But you still  
24          have to remember Kevin Heard got nothing  
25          for coming here to testify.

1                   Keep in mind all of the intricate  
2                   details that Kevin Heard had, and how he  
3                   would have gotten that information. What  
4                   about Kareem Gilbert? Nice little stunt  
5                   that he pulled here. He tells the police  
6                   one thing, the prosecutors, the Court, he  
7                   tells us all it's one way, then he comes  
8                   here and he takes the stand and he says  
9                   it's a whole different way. Why would he  
10                  do that? Why? You have to ask yourself,  
11                  why would he risk things that he  
12                  received?

13                Let me tell you, ladies and  
14                gentlemen, people like Kareem Gilbert  
15                don't think like you and I. People like  
16                Kareem Gilbert are ignorant. They are  
17                shortsighted, because people like Kareem  
18                Gilbert have absolutely no concept of a  
19                future. And when I say a future, ladies  
20                and gentlemen, I don't mean I'm going to  
21                get married some day and have children.  
22                I mean tomorrow. People like Kareem  
23                Gilbert have no concept of their actions  
24                and the reactions and what is going to  
25                happen tomorrow. That's how they live.

1 That's why he was willing to pull the  
2 stunt that he pulled. He thinks he's  
3 smarter than you. He's smarter than the  
4 Court. He's smarter than the prosecutor  
5 and he's smarter than the police.

6 You saw him, you're told to judge  
7 the credibility of the witnesses as they  
8 appear on the stand and their behavior,  
9 their manner of testifying. He sat up  
10 there and laughed. He covered his face  
11 repeatedly to hide his smile, but he  
12 couldn't keep it from you the whole time,  
13 you saw him. Do you honestly believe  
14 that when he took the stand he was  
15 telling the truth? This is a game to  
16 people like Kareem Gilbert. It's a joke,  
17 and he thinks that he got the last laugh  
18 with the little stunt that he pulled.

19 Ladies and gentlemen, he was wrong,  
20 because at the end of the day you would  
21 have to set aside all reason and all  
22 common sense, throw out all of the other  
23 evidence, the direct and circumstantial  
24 evidence, disregard Dean Shade, Kevin  
25 Heard, Victor Davis, Jr., Detective Ron

1           Avant, the criminalist, the police, the  
2           crime lab employees, and the hard fact  
3           that there is no way, ladies and  
4           gentlemen, applying reason and common  
5           sense, there is no way that that spit  
6           laid in the street on blacktop for 12  
7           hours, on a 70-degree day for 12 hours,  
8           and it remained in that condition and  
9           just so happened to be seven feet from  
10          where Victor Davis died, where he was  
11          murdered.

12                   And it just so happened that there  
13          is a one in 8 quintillion, 432  
14          quadrillion chance that it's Ruben  
15          Jordan. It's Ruben Jordan's spit.  
16          That's more than the population of the  
17          Earth. You would have to forget all of  
18          that. You would have to suspend all  
19          reason and all common sense and believe  
20          that that's what happened on  
21          October 31st, 2008 in order to find Ruben  
22          Jordan not guilty of this crime.

23                   Ladies and gentlemen, Ruben Jordan  
24          shot and killed Victor Davis. He planned  
25          it, he hunted Victor down like an animal.

1 He carried out his plan thinking the  
2 streets were the streets. And if a  
3 witness ends up dead, that just means  
4 that witnesses aren't going to come  
5 forward, then cases get dismissed. But  
6 the streets weren't the streets this  
7 time, because Ruben Jordan, just like his  
8 son, is ignorant and sloppy and he left  
9 hard evidence, he left that DNA at the  
10 crime scene, and now it's up to you.

11 Ladies and gentlemen, the State is  
12 confident that when you consider all of  
13 the evidence, direct, circumstantial,  
14 testimonial, that you will convict Ruben  
15 Jordan of aggravated murder, gun specs  
16 and the weapons under disability as  
17 charged in the indictment. Thank you.

18 THE COURT: All right. Mr. Whalen?

19 MR. WHALEN: Could we approach the  
20 bench for just a minute?

21 THE COURT: Okay. In the presence  
22 of the jury?

23 (Unreported sidebar conference.)

24 THE COURT: You may proceed,  
25 Counsel.

1                   MR. WHALEN: Thank you, Your Honor.  
2                   I also, and my client and my co-counsel,  
3                   thank you for all the attention you have  
4                   given us. I know that this has been an  
5                   unusual situation, both with the weather  
6                   and the case that you're hearing, and we  
7                   have taken you to an area where you are  
8                   not accustomed to in hearing things about  
9                   what goes on in Cincinnati here that you  
10                  can find it hard to relate to, I would  
11                  hope.

12                 When the Judge charges you, she's  
13                 going to tell you that you have to find  
14                 beyond a reasonable doubt that Ruben  
15                 Jordan committed this crime, and she's  
16                 defined it for you once and she's going  
17                 to define it for you again, and she's  
18                 going to tell you it's that kind of  
19                 belief that you would use in the most  
20                 important of your own affairs. And let's  
21                 take a minute and think about what is the  
22                 most important of your affairs.

23                 If you're a parent, your children.  
24                 would you let some of these witnesses  
25                 babysit your child? If you're buying a



1 new home, would you accept their word on  
2 buying a house or buying a car? Those  
3 are the things that are most important in  
4 your own affairs. And then she's going  
5 to tell you you should find Ruben Jordan  
6 not guilty if they don't do that. But  
7 she's going to tell you that you must,  
8 she's going use that word, you "must"  
9 find him not guilty if you don't find  
10 beyond a reasonable doubt that they have  
11 proved this case.

12 Excuse me. I have got a bad cold.  
13 They talk about your witnesses. And  
14 Victor Davis, Jr., came in, and other  
15 witnesses, and there wasn't any doubt  
16 that Victor Davis, Sr. knew that he was  
17 going to die. He saw a murder committed,  
18 he went to the police and acknowledged  
19 it, and he was being threatened on a  
20 regular basis. He knew he was going to  
21 die. You just don't do that kind of  
22 thing down in that community, and he did  
23 it anyway because his friend was killed.

24 witnesses told you that Victor  
25 Davis, Jr., was afraid of Shawn and

1 Kareem. He didn't tell you that he was  
2 afraid of Ruben Jordan, never mentioned  
3 the word Ruben Jordan. The only time he  
4 mentioned -- Victor Davis, Jr. mentioned  
5 Ruben Jordan was he said that after he  
6 found out who Ruben Jordan -- who Victor  
7 Davis was, he went to Victor Davis, Jr.,  
8 put his head on his shoulder and told him  
9 how sorry he was, but he says men don't  
10 do that. Think about it for a moment.  
11 If you found out your child took  
12 somebody's life and you knew the  
13 relative, would you not go to them and  
14 express not only your sorrow that they  
15 have had that loss, but the particular  
16 sorrow that your son is the one that  
17 committed that?

18 Victor Davis Jr. also told you that  
19 he was involved in some gun play. He was  
20 out carrying a gun and he was being  
21 threatened by Shawn Gilbert, Kareem's  
22 brother. He was walking around, showed  
23 him a gun, pointing it at him. He wasn't  
24 ever threatened by Ruben Jordan. It was  
25 Shawn Gilbert that was involved. Shawn

1           Gilbert is the same one that took Victor  
2           Davis aside and was jawing at him when  
3           the first killing occurred because he  
4           didn't want him talking to the police,  
5           not Ruben Jordan. Ruben Jordan wasn't  
6           even mentioned.

7                     Now, Dean Shade didn't tell you he  
8           saw all that. He saw from the window,  
9           and you're supposed to believe what this  
10          man told you beyond a reasonable doubt?  
11          But it's amazing because what he saw has  
12          improved as time went by.

13                    Now, he's 75 percent sure that it  
14          was Ruben Jordan. Before that, he  
15          wasn't. And he also tells you that he  
16          saw Victor Davis die, saw him take that  
17          last breath. But there were no police  
18          officers there. And yet a police officer  
19          came in and told you that he was talking  
20          to Victor Davis and saw him take his last  
21          breath and die.

22                    Now, how could Dean Shade have seen  
23          that? He couldn't. He's making stories  
24          up, people that are down there at this  
25          scene. There is rumors going around,

1 people talking, people whispering through  
2 windows and everybody builds their own  
3 case.

4 You know, there is very few people  
5 that I believe came in here and testified  
6 that don't have their own prejudices.  
7 They want you to believe a certain way.  
8 Detective Glindmeyer came in and he told  
9 us that they avoid contamination of the  
10 scene, that they are down there and they  
11 rope it off and nobody is allowed to come  
12 in except that you've already heard  
13 people testify that there were people  
14 down there, somebody talking to Victor  
15 Davis as he was dying.

16 And there was a woman down there  
17 picking up stuff off the sidewalk where  
18 the killing had occurred. What did she  
19 take? I don't know, and you don't  
20 either. But it certainly is a  
21 contaminated scene.

22 And then he tells you, because he  
23 wants you to find Ruben Jordan guilty,  
24 tells you that Victor Davis, there were  
25 scrapes on his knuckles and they were

1           bleeding. You just don't collapse when  
2           you fall on pavement. Is that he was in  
3           a fight, a fistfight. He was fighting  
4           for his life. And now isn't that  
5           dramatic? Here's a man down there  
6           fighting for his life, and he got the  
7           proof, his knuckles. And now that's what  
8           the officers want you to believe, except  
9           the coroner comes in and says that's not  
10          true.

11                 These are the types of abrasions  
12          that you routinely see from a scrape  
13          against a paved surface wall, something  
14          that is a broad, flat surface. Asked  
15          him, could he get in a fistfight?  
16          They're not exactly the right location  
17          for the average fistfight. You almost  
18          have to scrape somebody this way or this  
19          way on a flat surface, preferably with  
20          more of an abrasive surface like concrete  
21          or brick. But this officer wants you to  
22          imagine that Victor Davis is down there  
23          fighting for his life because it's more  
24          dramatic and gets your emotions involved.

25                 And the doctor went on to say all

1           very short ones that involved his knee,  
2           and also again a prominence with a broad  
3           surface area, area relatively speaking to  
4           the right side of his forehead, there is  
5           much to appear to be from striking the  
6           pavement, a bit of a skid on the pavement  
7           or falling. She explains it all  
8           medically, and she doesn't have a reason  
9           to adjust. I think she's the only one  
10          that was totally unbiased when she came  
11          in and testified. You saw her up there  
12          on the stand. She tells you what her  
13          name is, what her credentials were and  
14          what she found in the autopsy.

15               Officer Glindmeyer was asked by the  
16          prosecutor, but it is your education,  
17          training and experience, 31 years of  
18          experience, that when you collected the  
19          phlegm that night of the crime scene it  
20          was fresh phlegm? Yes, ma'am. I asked  
21          him: Have you had any training in  
22          determining fresh phlegm from stale  
23          phlegm? He said there is no training,  
24          it's just experience.

25               So, when he told you from his

1 training, he lied. He doesn't have any  
2 training in that. I'm not trying to hide  
3 something from you, there was phlegm down  
4 there and it belonged to my client. How  
5 it got down there, I don't know and you  
6 don't know. His grandchildren live down  
7 there and he was down at the scene.

8 whether it was 12 hours -- and  
9 let's extend it a little bit, let's say  
10 he was down there when Victor Davis was  
11 killed. That doesn't tell you that he  
12 was involved in it. Did he tell his son  
13 to do it? Did he fire the shot? You  
14 don't know those things. You have got to  
15 speculate. And what you have to do is  
16 find it beyond a reasonable doubt, and  
17 it's not there. The phlegm was there,  
18 Ruben Jordan was down there at some time.  
19 When, I don't know. All the officers  
20 said it could have been within an hour.  
21 I don't know and you don't know.

22 Now, they tell you Kevin Heard came  
23 in and said he's got nothing to gain, and  
24 he's got all these intimate details. All  
25 these intimate details were in the

1 newspaper and heard out on the street.  
2 Now, they want you to believe beyond a  
3 reasonable doubt that my client came up  
4 and told him that he killed somebody and  
5 his son is taking the fall for it.

6 Let's go back to beyond a  
7 reasonable doubt in the most important of  
8 your affairs. Would you let Kevin Heard  
9 watch your children? Would you let Kevin  
10 Heard sell you a house? This man, who's  
11 Mr. All American, is out every day  
12 selling crack cocaine. That's his  
13 occupation. People that go out and  
14 commit prostitution, commit crimes, high  
15 on crack, this is one of the gentleman  
16 out there feeding it to them, and he's  
17 telling you he came in as a regular  
18 citizen.

19 Also, he's somebody that got shot  
20 because of his dealings and had to leave  
21 this area. Now, has he and Ruben had  
22 fights in the past? Does he have a  
23 grudge against Ruben? I don't know and  
24 you don't either.

25 But you have really got to sit and



1 think about beyond a reasonable doubt  
2 with Kevin Heard. Does he really know  
3 what he's telling you?

4 Kareem Gilbert. One of the pieces  
5 of evidence that you're going to have  
6 back there is the plea agreement that the  
7 prosecutors made with Kareem Gilbert.

8 Now, I want you to remember a  
9 couple of things, because this absolutely  
10 amazes me. On May the 17th, Kareem  
11 Gilbert was set to go to trial for this  
12 murder and the other one that he  
13 committed. The State of Ohio was ready  
14 to go into a courtroom and tell you they  
15 were going to prove beyond a reasonable  
16 doubt that Kareem committed that crime,  
17 and they knew about Mr. Heard and they  
18 knew about the phlegm, but they're going  
19 to prove to you that Kareem did that  
20 killing. Isn't that amazing?

21 The State of Ohio is going to trial  
22 against Kareem and prove that he  
23 committed that crime while they know all  
24 these things now that they tell you  
25 proves that Ruben was beyond a reasonable

1           doubt, and they're going to say, well,  
2           they could have acted jointly. Nobody  
3           said they did except what you heard here  
4           from the prosecutor.

5                     Now, you have Kareem Gilbert's  
6           statement that he made to the police.  
7           And the Judge is going to tell you that  
8           that is not evidence of what the  
9           statement says. The evidence is you can  
10          use his statement to judge what he's  
11          saying, whether it's true or not, not any  
12          of the statement as evidence against  
13          Ruben Jordan, and that's difficult.  
14          Somebody tells you this and somebody else  
15          says well, you can only use that little  
16          bit of information for just one purpose,  
17          but that's what you have to do. You have  
18          sworn an oath that you're going to well  
19          and truly try this case. I know it's  
20          difficult, but that's what the Judge is  
21          going to tell you.

22                    Now, the State has decided that  
23          they really want Ruben Jordan. Kareem  
24          Gilbert goes out and chases a man down  
25          because he hit him with a sandwich.

1 Chases him down like a dog and shoots and  
2 kills him. And the State agrees that  
3 they are only going to get a plea to  
4 manslaughter, not aggravated murder, not  
5 murder, manslaughter. And he's agreed  
6 that he's only getting an 18-year  
7 sentence in exchange for that. He's got  
8 to tell them that his dad was involved.

9 Do you know what that is like for a  
10 19-year-old? All the sudden, you're  
11 going away for 18 years and you may be  
12 going away for even more than that for an  
13 aggravated murder because for two of  
14 them, because you're not going to get a  
15 manslaughter if you don't tell us what we  
16 want.

17 So, now, this 19-year-old and one  
18 of the witnesses says that he's a vicious  
19 killer. Says, hey, I got an out, I only  
20 have to do 18 years for two killings,  
21 I'll give them what they want, and he  
22 did. And you're going to have the  
23 letters that he wrote to his father, and  
24 on one of them he says specifically dad,  
25 I have got two body bags, can you take

1           one of them for me? He doesn't say in  
2           that letter, tell them what you really  
3           did, dad.

4                     Now, the prosecutor tells you that  
5           there is a part that is scratched out and  
6           that could have said, I don't know what  
7           she said, it could say anything, but it  
8           doesn't fit into what she's trying to  
9           say. And I will tell you the back of  
10          this one, the yellow letter, is scratched  
11          out. That letter was a letter from his  
12          father, and he used the same paper, the  
13          back of the paper and sent his letter to  
14          Ruben.

15                    Now, he's asking his dad to take  
16          this body bag off of him. He doesn't  
17          want to be caught with that because he  
18          knows he's going to go for a long time if  
19          he gets 20 years for each one. He's  
20          going to be 60 when he gets out, and he  
21          doesn't want to deal with that. He's  
22          asking his dad to take it and dad won't  
23          take it. He doesn't do it, he wasn't  
24          involved and he's not going away for an  
25          aggravated murder that his son committed.

1           The 911 calls that the police  
2           officer testified they got from people  
3           around the scene never once mentioned  
4           Ruben Jordan. They sure did mention  
5           Kareem and they sure did mention Shawn,  
6           didn't mention Ruben Jordan. Isn't that  
7           amazing?

8           And the other calls that they got,  
9           Victor Davis Jr. told him that his father  
10          was afraid of Shawn and Kareem. When  
11          Victor Davis was still alive, he ran a  
12          bootleg cab and he sold drugs. He isn't  
13          the all American hero that they want to  
14          make him out to be. But he told the  
15          police he was getting phone calls on a  
16          regular basis to come and pick up  
17          somebody, take them on a cab ride. Was  
18          it this gentleman here? No. It was  
19          Kareem that was calling to try to get him  
20          to come pick him up. why? Because he  
21          knew what he was going to do. He said he  
22          gave him a green card and didn't tell him  
23          till that night.

24          You know, Kareem is hit by somebody  
25          with a sandwich. How many times have you

1           been confronted by somebody that stepped  
2           on your foot or pushed you or slammed the  
3           door in your face? He is hit with a  
4           sandwich. And what does he do? He  
5           leaves the area. He lives right there  
6           within several, 50 feet, comes back out  
7           to the scene and what's he do? Pulls a  
8           gun and chases a man down and kills him.  
9           That is a vicious killer. And wasn't no  
10          doubt he intended to do it. He came back  
11          with the gun. He didn't have the gun  
12          there. And he came back because the man  
13          had hit him with a sandwich. He shot and  
14          killed him, and he gave Victor Davis a  
15          green card.

16                 That's the kind of person he is,  
17          that the State is telling you he's  
18          indicated his father did it. We've also  
19          allowed to come into evidence, without  
20          argument, Ruben Jordan's record, and I  
21          don't know whether it's five or six  
22          convictions that he's gotten, and he's  
23          been to prison before. A man who's 38  
24          years old has got five or six felony  
25          convictions, ought to tell you something

1           about the kind of person that you're  
2           dealing with. He likes drugs. He does  
3           drugs. People have told us that he's a  
4           crackhead. But not one of those is for  
5           domestic violence, not one of those is  
6           for assault, not one of those is for a  
7           murder or a felonious assault. There  
8           isn't one crime of violence in that man's  
9           record. And then they are telling you  
10          that to save his son he went out and  
11          chased somebody down, followed them, went  
12          down to the scene and shot and killed  
13          them.

14                 I'm going to ask you when you go  
15          back there, remember the Judge's  
16          instructions beyond a reasonable doubt.  
17          Was Ruben Jordan down there shortly  
18          before or shortly after the killing? He  
19          might have been. Was he there when the  
20          killing occurred? I don't know and  
21          neither do you. But I'm telling you, the  
22          State cannot prove this matter beyond a  
23          reasonable doubt that Ruben Jordan took  
24          Victor Davis's life, and I'm asking you  
25          to return a verdict that the Judge is

1           going to tell you you must do if it isn't  
2           proven beyond a reasonable doubt, and  
3           that's a not guilty. Thank you.

4           THE COURT: State have any more --  
5           anything else to add here, closing  
6           argument?

7           MR. TIEGER: Yes, Judge. Thank  
8           you.

9           THE COURT: I should tell you that  
10          the reason that the State has the  
11          opportunity to address you twice is  
12          because they have the burden of proof,  
13          and that is the reason. The law allows  
14          them to have the last word in this.

15          MR. TIEGER: Hello, everybody. It  
16          is hard to go last. This has been a long  
17          trial, like Ms. Shanahan said. I'm sure  
18          you're ready to deliberate and finally do  
19          what you are expected to do. I do have a  
20          few things to say.

21          First of all, and this is very  
22          common in these kind of cases, you have  
23          seen Ms. Shanahan and especially Mr.  
24          Whalen, and I'm gonna do it as well in my  
25          closing argument, is like pull out a



1 transcript. And Ms. Renken, the court  
2 reporter, she's been nice enough to type  
3 up some of the transcripts for us. We  
4 have got the transcript of Kareem  
5 Gilbert, what he said to the police, the  
6 discs that you listened to.  
7 Unfortunately, you do not get any of  
8 those transcripts.

9 The only evidence that you're  
10 allowed to receive are the exhibits that  
11 are retained by the court reporter. So I  
12 know we have been referring to those and  
13 a very common jury question is what's the  
14 deal? You know they have been referring  
15 to these transcripts, these pages, these  
16 lines, we want those -- we need those.  
17 Well, that is not part of the evidence  
18 that you have, and you're not going to  
19 get those in the jury room. You will get  
20 actually the discs of Kareem Gilbert's  
21 statement to myself, Ms. Shanahan and the  
22 police officers in the jury room.

23 So, if you would like to listen to  
24 them, you can definitely listen, and  
25 Mr. Brenner or Ms. Smith can get you a

1 disc player, whatever that you would need  
2 to play that.

3 I hate to say the same things as  
4 Ms. Shanahan. Hopefully, we won't  
5 overlap too much. Was Victor Davis  
6 murdered? Absolutely. He was shot in  
7 the head. He had no weapon. He was shot  
8 three times. He was left to die in the  
9 street. Was it an unknown killer? I  
10 think Ms. Shanahan covered that very,  
11 very well. It was not an unknown killer.

12 So, the evidence is that as Victor  
13 Davis told Detective Avant, the family,  
14 I'm afraid of the Gilbert family. So,  
15 now all we are left with is who in the  
16 Gilbert family did this? Which one of  
17 the -- I'm talking Mr. Jordan is part of  
18 the Gilbert family. Which part of that  
19 extended family did it?

20 We really only have three names,  
21 Kareem, Shawn and Ruben Jordan. Which  
22 one of those three? And as far as Shawn  
23 goes, I mean, he's kind of an unknown --  
24 he hasn't been a witness, he hasn't been  
25 called. We really don't know too much

1           about him other than to say there is no  
2           evidence whatsoever to suggest in any way  
3           that he was part of this, was there, had  
4           any involvement in this whatsoever.

5                     There is no witnesses, and there is  
6           no physical evidence to suggest that he  
7           was at the crime scene of the Victor  
8           Davis homicide when Victor Davis was  
9           murdered. There is nothing other than  
10          the fact that he was confronting Mr.  
11          Davis that night and Mr. Davis was scared  
12          of that family.

13                    So, let's rule him out. Now, let's  
14          go to -- the Court will tell you, I  
15          believe, and I don't know whether it's in  
16          the instructions or not, but that we  
17          don't have to prove motive in a murder  
18          case. But there is always a motive in a  
19          murder case. And in this case, the  
20          strongest possible motive is to protect  
21          Kareem Gilbert from answering to the  
22          murder of Brian Austin.

23                    And as far as Victor Davis not  
24          specifically being afraid of Ruben  
25          Jordan, like Mr. Whalen said, sometimes

1           the most dangerous enemies are the ones  
2           you don't know about because the ones  
3           that you know about, you don't have to  
4           pick them up in a bootleg cab, like  
5           Kareem Gilbert said he called him for.  
6           You don't have to really -- you can plan  
7           for those people that you know are going  
8           to get you, but the people that you  
9           really don't know about oftentimes are  
10          the most dangerous. And in this case the  
11          family patriarch, Ruben Jordan, took  
12          over.

13                 Now, as far as the defense  
14          attorney, Mr. Whalen is one of the best  
15          local attorneys there is. He's a very,  
16          very experienced and talented lawyer.  
17          And you can tell when we saw these  
18          letters that were written, those were not  
19          disclosed. And when Mr. Whalen saw Mr.  
20          Jordan in the penitentiary, we did not  
21          know about that.

22                 Now, the rules say that the defense  
23          lawyers don't have to do that. So, I  
24          mean, he did not violate any rules and he  
25          played within the rules, but basically,

1 as a defense attorney, what his job is,  
2 and he's done it very well, are to win  
3 the case at all costs within the Rules of  
4 Evidence.

5 Now, our job, Ms. Shanahan and I,  
6 is to see that justice is done in a  
7 particular case. We have got a different  
8 burden than the defense has. And what we  
9 are trying to say is that as far as this  
10 plan goes, the plan that we are  
11 suggesting was used by Mr. Gilbert and  
12 Mr. Jordan backfired because Mr. Jordan  
13 and Mr. Gilbert were really unaware of  
14 the Rule of Evidence because there is a  
15 rule, and it's basically called  
16 forfeiture by wrongdoing that says that  
17 when a witness is killed, that witness's  
18 statement can be used if the wrongdoing  
19 is by the perpetrators of the act and  
20 that witness's unavailability is caused  
21 by the people that did the original act.

22 So, when people like Mr. Jordan and  
23 Mr. Gilbert are thinking about how do we  
24 handle this, let's just kill the witness,  
25 that witness's statement will not come

1 in, you'll walk away from the Austin  
2 murder and everything is going to be  
3 better. Well, the Rules of Evidence  
4 foresee that type of situation, so what  
5 happens is Davis's statements to the  
6 police are admissible against Mr. Gilbert  
7 in his own trial.

8 So that, plus, the DNA on his  
9 t-shirt corroborating the crime had been  
10 strong enough to pursue the case against  
11 Mr. Gilbert. And the plan is so obvious,  
12 this plan that Ruben Jordan's charge,  
13 Kareem Gilbert can come in here and say  
14 he lied, Ruben Jordan will be found not  
15 guilty, as Mr. Whalen asked you to do.  
16 Just remember, this plan has been hatched  
17 a long, long time ago. We are finally at  
18 the culmination this morning, with you  
19 folks, of his plan to get out of this  
20 from the very beginning.

21 Don't think this was something that  
22 had not been thought through. The whole  
23 thing is that they knew there was going  
24 to be a jury somewhere down the road, and  
25 this is his clear final test, his final

1           obstacle is you folks, and we are asking  
2           that you not let him get past justice by  
3           a jury trial in this particular case,  
4           because when he is found not guilty, I  
5           don't know whether you have heard, it's a  
6           term called double jeopardy.

7                     And at a later point, if Kareem  
8           Gilbert is charged with Davis's homicide,  
9           there is nothing to prevent Ruben Jordan  
10          from coming in here, another jury months  
11          and months from now and saying, yes, I  
12          did do it.

13                    Now, that would be pretty  
14          monumental, and I don't know if anybody  
15          would believe him, but double jeopardy  
16          prevents him from being tried twice for  
17          the same crime.

18                    So, again, this is the kind of plan  
19          that you don't know where it's going to  
20          go, but it's certainly foreseen that type  
21          of thing could happen depending on how  
22          this thing goes with you folks.

23                    And I told you in jury selection  
24          Kareem Gilbert was a dangerous  
25          individual. We didn't try to hide that

1 at all, and that you got a 16-year-old  
2 thug like Kareem Gilbert, and I'm a  
3 little bit confused that he got 18 years  
4 flat. Mr. Whalen is saying that if he  
5 gets a much more significant sentence,  
6 and certainly reinstituting the Austin  
7 murder and perjury charges, all these  
8 things could add up to a lot more time.

9 And I will tell you that you will  
10 have this in the jury room, which is  
11 Kareem Gilbert's plea agreement, and you  
12 can see on the back there is a lot of  
13 legal language, my name is on here, I  
14 signed it as well as Mr. Gilbert and  
15 Mr. Issenmann signed this as well Mr.  
16 Gilbert's attorney. And I'm not naive,  
17 and I have been doing this a while, and I  
18 don't trust anybody to do what they say,  
19 even though we expected Kareem Gilbert to  
20 come in here and tell the truth about  
21 what he had originally told us.

22 So, obviously, you know, Ms.  
23 Shanahan and I are not stupid enough to  
24 say here, go ahead and do your 18 years,  
25 just promise to tell the truth, and



1           that's it. Because if we did that, we  
2           would be extremely naïve, and that would  
3           be wrong of us to do. So, we do have a  
4           plea agreement, so that there are  
5           consequences and there are going to be  
6           consequences to Mr. Gilbert.

7                     But my contention is that because  
8           he's facing more time, the fact that he  
9           may do more time, 18 years to a  
10          16-year-old thug is the same as 30 years,  
11          40 years. It's a long period of time.  
12          As Ms. Shanahan said, he doesn't think  
13          past today. So what if it's 18 years, it  
14          could be life to him. We wanted to make  
15          sure there are consequences, there are  
16          going to be consequences. We protected  
17          ourselves, but that doesn't mean that he  
18          didn't come in here and lie for his  
19          father.

20                    And I agree with Mr. Whalen, Mr.  
21          Gilbert does not care about rules and  
22          ramifications because of his own murder.  
23          He doesn't care. He doesn't think past  
24          the moment. He did what he did with you  
25          folks because of the brains of the

1 family, Mr. Jordan.

2 And it's funny that -- I'm a little  
3 bit confused about Mr. Whalen's closing  
4 argument, that he's almost conceding that  
5 Mr. Jordan was actually there at the time  
6 of the murder. And my contention is that  
7 if he was there at the time of the  
8 murder, he's guilty. There is no other  
9 reason to be at the scene of the Victor  
10 Davis murder unless you were involved.

11 If he were that close to the body  
12 and spit at the time Mr. Davis was  
13 murdered, he's either guilty as the  
14 gunman or guilty as a complicitor, and  
15 you will get the complicity instruction  
16 which means that you aided, abetted,  
17 assisted, encouraged or were part of a  
18 plan. It doesn't matter who the actual  
19 gunman was, and that actual -- and the  
20 complicitor is just as guilty, as Ms.  
21 Shanahan mentioned, of the gun spec as is  
22 the actual shooter.

23 And what I think is interesting  
24 that Mr. Whalen, really if you think it  
25 through and you all are an intelligent

1 jury, that he is saying that basically is  
2 Kareem Gilbert the killer? Is that what  
3 he is saying in his closing argument?  
4 Because he doesn't care. He chased  
5 somebody down like a dog, he'll do what  
6 it takes, all that kind of stuff.

7 But the funny thing is Kareem  
8 Gilbert, what Mr. Whalen wants you to  
9 believe, is Kareem Gilbert came in here  
10 and told you the truth about his father  
11 not being involved. In fact, the whole  
12 thing about the alibi, if you recall,  
13 Kareem Gilbert said we were at home  
14 together that night. Believe me, I  
15 didn't go down there, he didn't go down  
16 there. But what's also more interesting  
17 is that Leshuande Ramsey, if you recall  
18 her from Friday, came in here, and not  
19 only did she alibi him, but she alibied  
20 Kareem Gilbert, didn't she, because she  
21 said that he was in his pajamas the whole  
22 night so neither one of them could have  
23 done it.

24 was she truthful with you when she  
25 said that he and Kareem Gilbert were home

1           that night with the big thing watching  
2           movies and all that? So, if you believe  
3           her, it couldn't have been Kareem Gilbert  
4           either. But Mr. Whalen is saying, hey,  
5           even if he were down there and did spit,  
6           it doesn't mean that he did it. I would  
7           strongly disagree with that.

8                     And I'm just going to briefly go  
9           through some of these statements with  
10          you. And, again, you're not going to  
11          have these, and I apologize for almost  
12          reading from them when you're not going  
13          to get them, but what you need to look at  
14          is how these witnesses, and I think the  
15          sign of the truth, how you can test  
16          people is to see what did they say, and  
17          then compare what they said to what  
18          somebody else says and see if there is  
19          anything that is matching.

20                    For instance, if Kareem Gilbert  
21          said something in his May 17th statement  
22          that matches what Kevin Heard said,  
23          Kareem Gilbert and Kevin Heard do not  
24          know each other. That would be the truth  
25          because they match and they have no idea

1           what the other one said.

2                   And I would strongly disagree with  
3           what Mr. Whalen said about Mr. Heard.  
4           There is no evidence that these details  
5           were in the paper, because the reporter,  
6           Kimbell Perry, is sitting in the  
7           courtroom. These papers are all  
8           archived, and it's easy to get copies of  
9           what's in the paper. There is no  
10          evidence that anybody got any information  
11          in the newspaper on this case.

12                   Kevin Heard told you, and I'm  
13          summarizing, that he previously worked  
14          with Officer Sneed a long time ago, and  
15          there has been no contact since then, and  
16          he called because he trusted Sneed. But  
17          Sneed told you, as well, that Kevin  
18          Heard's information is corroborated by  
19          Sneed, because Sneed said I knew him, I  
20          had worked with him in the past. We  
21          hadn't had contact for a while. He  
22          called me, I called him back. He had  
23          some vague information about a murder,  
24          that he knew who had done it, but all he  
25          had was a nickname. He didn't have the

1 full name. And I told him to try to find  
2 out what that was.

3 That's what Kevin Heard told you,  
4 that's also what Officer Sneed told you.  
5 They corroborate each other. That is the  
6 test that you look at to see whether  
7 somebody is telling you the truth.

8 Also, both of them said that they  
9 met at Kroger's a couple weeks later.  
10 Again, they corroborate each other.  
11 Sneed told you what Heard did. Heard  
12 told you the same thing. When Heard said  
13 I got the name, Sneed corroborates that  
14 and he gave him the name of Luke,  
15 Detective Luke. And what does Luke tell  
16 you? That she got a phone call from  
17 Sneed. And, again, these are the things  
18 that you use to test credibility. And  
19 going from there that you look at all the  
20 specific case facts.

21 Does Kevin Heard sell drugs on  
22 Burnet? Sure. Does the defendant use  
23 crack cocaine? Well, Kevin Heard said he  
24 did, Kareem Gilbert said he did, and even  
25 Leshuande Ramsey said that Ruben Jordan

1           uses crack cocaine. So, if we can take  
2           that for a given that Ruben Jordan --  
3           even Mr. Whalen says he is a crack user.  
4           Does Kevin Heard sell crack on Burnet?  
5           Yes. Does the defendant have to buy  
6           crack from somebody? Obviously. Did the  
7           defendant buy from Mr. Heard? Did he?  
8           There is no reason to say that he didn't.  
9           He's on Burnet. It's walking distance.  
10          He's a known drug dealer.

11                 So, if you ask yourself, do they  
12          know each other? Do Heard and Jordan  
13          know each other? I think you could go  
14          back in the jury room and say, yeah, they  
15          did know each other. So, now, the issue  
16          is, did he say what Mr. Heard said he  
17          said? He's known by Red. Everybody said  
18          that that's his nickname. He said that  
19          he's always had a shaved -- a bald head  
20          or shaved head. Mr. Heard said ain't  
21          never seen him with hair. All the  
22          witnesses say that as well. He does not  
23          want to be labeled a snitch.

24                 Obviously, there is a lot for him  
25          to lose and nothing to gain. He's saying

1           it because he's coming in here, because  
2           he told you it's the right thing to do.  
3           He even told Mr. Jordan that he's going  
4           to go to hell for what he did. He  
5           told -- Kevin Heard told you that Ruben  
6           Jordan told him that his wife and I think  
7           daughter or sister were trying to tape  
8           him.

9                     If you recall, Mr. Heard thinking  
10           of one of the conversations Mr. Heard had  
11           with Mr. Jordan, I think the second one,  
12           Jordan came in and said, hey, my wife and  
13           daughter or sister are trying to tape me.

14                    At the time that's pretty  
15           inconsequential, isn't it? But these  
16           kind of details turn out to be the most  
17           important things of the case because  
18           Kareem Gilbert in his May 17th statement  
19           told the police the same exact thing,  
20           that his mom, and I believe sister, were  
21           trying to videotape Ruben Jordan and  
22           trying to get him to confess on video,  
23           but it didn't work like a telephone. How  
24           would Heard know exactly -- would know  
25           that other than to hear it from him?



1 MR. WHALEN: Your Honor, I'm gonna  
2 object. He's violating the instructions  
3 that you're gonna give them about Kareem  
4 Gilbert's statement.

5 THE COURT: Do you want to step  
6 over here, Counsel?

7 (The following transpired at  
8 sidebar as follows:)

9 MR. TIEGER: Judge, basically what  
10 I'm saying, the defense is wanting the  
11 jury to believe that what Kareem Gilbert  
12 said under oath was true, and I'm saying  
13 why? What he said originally was true,  
14 and they can only use it, I agree, for  
15 impeachment, but it's a matter of, you  
16 know, he's saying believe Kareem Gilbert,  
17 we are alibied, he didn't do it, we are  
18 together.

19 THE COURT: And you're saying?

20 MR. TIEGER: I'm definitely not  
21 arguing they use it for truth.

22 MR. WHALEN: He's telling him to  
23 use Kareem Gilbert's statement to  
24 coincide with what another witness said  
25 to him, that's using it as evidence

1           against the father.

2           THE COURT:   Keep your voice down.

3           MR. WHALEN:   I'm sorry.

4           THE COURT:   Evidence against the  
5           father.

6           MR. WHALEN:   And you are telling  
7           them you can only use it to judge the  
8           truthfulness of what he testified here.

9           THE COURT:   Did you want to say  
10          something?   Do you want to say something  
11          about that?

12          MS. SHANAHAN:   No.

13          THE COURT:   Are you going to do a  
14          lot more comparisons?

15          MR. TIEGER:   No, no.   I'm going to  
16          go through some of the specifics that he  
17          said, just to say what he said in court  
18          was not true.

19          THE COURT:   What he said in court  
20          wasn't true?

21          MR. TIEGER:   Yeah.

22          THE COURT:   By contrasting with his  
23          statement?

24          MR. TIEGER:   I understand.   I'll  
25          try to stay away from that.

1           THE COURT: I'll make a curative  
2 instruction, that's what I'm going to do  
3 with it.

4           MR. WHALEN: Okay.

5           (Sidebar concluded.)

6           THE COURT: I want to advise the  
7 jury again that the statements of Kareem  
8 Gilbert that were made in the tape are  
9 not evidence, and does -- is not  
10 testimony, but it is used for a very  
11 specific purpose. And the purpose of  
12 closing argument is it persuade you that  
13 the State and the defense have proved  
14 their case, and they are referring to  
15 matters that come before this Court. But  
16 I'm advising you that you have a limited  
17 purpose in using anything connected to  
18 Gilbert -- to Kareem Gilbert's statement  
19 that he made. And I will explain what  
20 testimony is and the difference between  
21 the testimony and using it to weigh  
22 credibility. You're using taped  
23 statements to weigh his credibility;  
24 therefore, I have advised the State to be  
25 careful not to confuse the jury, and they

1           have agreed to do that. So, we'll  
2           continue.

3                   MR. TIEGER: Thank you, Your Honor.  
4           Again, Heard was very accurate in how to  
5           portray exactly what was said. Moving on  
6           to Dean Shade, the supposed  
7           inconsistencies as to his last breath are  
8           so inconsequential that they are  
9           ridiculous. Whether somebody dies -- and  
10          you heard Officer Fusselman say that he  
11          was there within, I think he said, 15 to  
12          20 seconds. I forget what he said. That  
13          he was around the corner. He got there  
14          very, very quickly.

15                   As to whether somebody gasped their  
16          last breath at 11:30 or 11:30 and 30  
17          seconds, again, not important as to what  
18          Dean Shade is trying to, as Mr. Whalen  
19          said, elaborate on what he had said  
20          before. Does Dean shade live in the  
21          building, just to start from the  
22          beginning? Obviously, he lives in the  
23          building. Does he have a window over the  
24          street? Yes, he does. Is that window  
25          directly over where the homicide

1           happened? It is. Did he have a chance  
2           to observe and see what he said he saw?  
3           Yes, he did.

4                     Some of us live in the suburbs, the  
5           suburbs have been mentioned. They live  
6           in houses. Some of those houses are set  
7           back from the street a number of feet or  
8           yards. It's hard to see sometimes out  
9           50 feet, however far your house is away  
10          from the street. But where your building  
11          is straight down on the street, very  
12          close, it's the sidewalk and then your  
13          building, it's a lot easier to see as  
14          you're looking down what you saw. There  
15          are no grudges. He's got no bad feelings  
16          about anybody. He's known the Gilbert  
17          boys, Shawn and Kareem, for a long time  
18          because he's lived there for a number of  
19          years.

20                    He told you positively that the man  
21          standing over Victor Davis was not Shawn  
22          Gilbert and it was not Kareem Gilbert.  
23          Positive about that. He knew both those.  
24          He's a hundred percent sure. There is no  
25          danger of misidentification with him

1           because he knows them.

2                       We talked about that in jury  
3           selection. Ruben Jordan is not a  
4           stranger to Dean Shade. There is no  
5           possible way for there to be any  
6           confusion or misidentification about what  
7           he said. He actually called 911. He  
8           said Victor Davis was a great guy. He  
9           said Victor Davis was concerned about  
10          being a witness, and he said he was  
11          75 percent sure it was him. Why is that  
12          important? The percentage isn't  
13          important, but what is important is that  
14          it's a bald-headed man standing over the  
15          body that's not Kareem or Shawn.

16                     If you reach the point in your  
17          deliberations that you are certain that  
18          it was somebody in the Gilbert family who  
19          did this, those two teen-agers are  
20          excluded, then you're left with him.

21                     There is nobody else in the world  
22          that wanted Victor Davis dead but the  
23          Gilbert family. He's the only one left.

24                     He told you that he heard a number  
25          of shots. He heard the scuffling and

1           then he heard the taunting. And what's  
2           interesting about the taunting is that  
3           again, there has been some testimony  
4           about why he'd spit.

5                       Now, do you spit to taunt somebody,  
6           like get up -- get up, help me up, hey,  
7           you're sitting on the ground. Hey, get  
8           up now, let's see how good of a witness  
9           you are now. You get up off the ground.  
10          Now you testify against my son, spit. Or  
11          do you spit because the activity was so  
12          strenuous, sometimes when you're running  
13          or in athletics, you're worked up, there  
14          is a physical exertion and there is a  
15          spit that happens after that. Which one  
16          was it? I don't know, but certainly  
17          there was something spit at that point.

18                     And Kareem Gilbert. Again, the  
19          defense is asking you to believe what he  
20          said in court was true, that he and his  
21          father were together and neither one of  
22          them could have done it.

23                     But as you play the statement, if  
24          you need to, if you look through that, if  
25          you read that statement, it's -- I mean

1 five trained people. I'm not trying to  
2 toot my own horn, but you got Detective  
3 McGuffey and Luke and Vauhgn and they're  
4 all homicide investigators. And Ms.  
5 Shanahan and myself all part of a plea  
6 agreement, as you can see that it says  
7 that. The statement has to be truthful.

8 And as Detective Ballman told you,  
9 a lot of people want to cooperate with us  
10 in investigations, and we have to make an  
11 independent determination of whether what  
12 they are saying is true, because we have  
13 got a duty, we are officers of the court,  
14 we are here to see that justice is done.  
15 So, that's why we -- and I don't want to  
16 say grill him for an hour, but it wasn't  
17 just like, okay, tell us -- you tell us  
18 he did it, and we'll take a couple  
19 minutes and then that's good enough for  
20 us. Because some of these questions were  
21 hard questions. Because if you recall,  
22 in part of the questioning, he said he  
23 threw his gun in the river.

24 But then later on, he said he put  
25 it in a garbage can. And I think



1 Detective Luke said wait a minute, I  
2 thought you said you threw it in the  
3 river. What's the deal? This wasn't a  
4 love fest between anybody and Kareem  
5 Gilbert, because then he could say I put  
6 it there and then went back and got it.  
7 Was he in the middle of the bridge and  
8 threw it off?

9 MR. WHALEN: Your Honor, can we  
10 approach?

11 (The following transpired at  
12 sidebar as follows:)

13 MR. WHALEN: I'm going to ask for a  
14 mistrial. He has just stepped over the  
15 line. He's now being a witness to what  
16 occurred when he was in there, and he's  
17 testified now about what was going on in  
18 that room and how many were there and why  
19 they asked this or that. He can't do  
20 that. He's a witness now and he can't be  
21 both the witness and the prosecutor.

22 THE COURT: Okay. So, you're going  
23 to make a motion?

24 MR. WHALEN: Yes.

25 THE COURT: You're going to

1           respond?

2                   MR. TIEGER: Judge, I mean, I'm not  
3           saying anything other than what everybody  
4           said. It's been testified as to who was  
5           there, that the five of us were there,  
6           and I'm using, as you were instructing me  
7           and will tell the jury, what he said in  
8           court was not true, and how it was  
9           impeached and why you should not believe  
10          what he said in court.

11                  THE COURT: I will caution you  
12          probably not to talk about what happened  
13          in the room at this point, but you made a  
14          motion, and for the record I don't find  
15          that it rises to the level of persuading  
16          the jury just off what he's saying, and  
17          probably is not durable enough for me to  
18          grant that, but I'm going to remind you,  
19          you have to stop.

20                  MR. TIEGER: I'm going to go  
21          through his statement, Judge, and say  
22          what he said and how.

23                  THE COURT: You can't be a witness,  
24          what you heard said.

25                  MR. TIEGER: Okay. I'll just read

1 from the transcript.

2 THE COURT: Stop supporting your  
3 comment. You can make those without  
4 referring to what you said, what you hear  
5 and did in the room.

6 MR. TIEGER: Thank you, Judge.

7 THE COURT: You can do that. So,  
8 that's my ruling. I'm going to deny the  
9 mistrial, but it's in the record.

10 (Sidebar concluded.)

11 THE COURT: We are going to take a  
12 comfort break at this time. Would you  
13 leave your notes here, jurors, and again  
14 I know you want a comfort break before we  
15 start deliberating on this matter and  
16 talking about the testimony and any  
17 argument. So, you know you cannot do  
18 that at this time.

19 Remember your admonitions, but  
20 there will be a comfort break for ten --  
21 we'll say 15 minutes so you all get  
22 prepared. Thank you.

23 (The jury leaving the courtroom at  
24 10:30 p.m.)

25 THE COURT: While they're gone,

1           there is new spectators that have come  
2           into the room, so at this time remove  
3           your cell phones, turn them off. I don't  
4           want them vibrating or doing anything. I  
5           don't know whether you have any cell  
6           phones or not, but get them out of your  
7           pockets and purses, and also do not have  
8           them in your hands. You're not allowed  
9           to have cell phones in your hands or  
10          using them.

11                       (Recess.)

12                       (The jury entering the courtroom at  
13          10:45 p.m.)

14                       THE COURT: And, Mr. Tieger, you  
15          may continue with your closing argument.

16                       MR. TIEGER: Okay. I only have a  
17          few more minutes. With Kevin Heard, just  
18          one more thing about Mr. Heard. He told  
19          you that he called Detective Luke on  
20          February 11, that's the disc that was  
21          played where the controversy was over  
22          when he said how old Mr. Jordan was. And  
23          I think the transcript said 20s, but  
24          Detective Luke said she thought it said  
25          four -- and then she interrupted him.

1           Those aren't introduced. I think there  
2           was a little dispute between the defense  
3           and us in terms of let's put it all in  
4           and there was an objection, so they were  
5           not put in.

6                       Regardless of that, that phone call  
7           was made on February 11th of 2009. And  
8           what's critical about that is that Mr.  
9           Heard told Detective Luke that he had  
10          spoken to Mr. Jordan, and Mr. Jordan was  
11          concerned at the time because he had just  
12          given a swab for DNA and that he was  
13          afraid that he dropped something at the  
14          crime scene.

15                      Again, very interesting because  
16          that's corroborated because Detective  
17          Luke told you that they did take a DNA  
18          swab from the defendant on February 8th  
19          of 2000, which is just three days before  
20          the Heard phone call which explains why  
21          Ruben Jordan was nervous right after that  
22          because he was afraid that he had dropped  
23          something at the crime scene.

24                      And just going through the  
25          statement of Kareem Gilbert, and, again,

1           you can listen to it, if you want. You  
2           don't have to listen to it if you don't  
3           want to, but just to use it for the  
4           purpose of saying that he -- what he said  
5           in court the other day about he wasn't  
6           there, his dad wasn't there, neither one  
7           did it because they were watching the  
8           steeler's game, to impeach him as far as  
9           why that isn't true, going into the  
10          details that he gave to everybody on  
11          May 17th, he said that they found Mr.  
12          Davis at a motorcycle club where he  
13          bootlegs, that he parked there on the  
14          side. And he said what his father did,  
15          where he pulled out a .38, a revolver,  
16          like a cowboy pistol and just started  
17          shooting. Remember, no shell casings at  
18          the scene, which is consistent with a  
19          revolver. That when his father, after he  
20          got in the car, he was asked what did  
21          your father say about what he had done?  
22          And Mr. Gilbert repeatedly, and this is  
23          throughout the interview, he really  
24          didn't -- he really ain't really say  
25          nothing to me.

1                   And, basically, like, he gave those  
2                   details, they just basically drove back  
3                   and that was over. And, again, somebody  
4                   that was trying to mislead the police  
5                   like he told you under oath that he was  
6                   doing, would come up with a lot of  
7                   details in a statement. What did he say?  
8                   I killed that guy. I'm glad I did. You  
9                   should have seen this, you should have  
10                  seen that. He didn't give any of those  
11                  details to the police.

12                 Again, why -- what he said under  
13                 oath was not true, that he really had an  
14                 alibi. He talked about the blue and  
15                 white car that Mr. Davis had. He talked  
16                 about how the car was parked. He talked  
17                 about the tussle or the scuffling by the  
18                 car. He talked about how they went back  
19                 to Ruben Jordan's house, and it goes on  
20                 and on. And rather than read through  
21                 this, I will, again, let you review it if  
22                 you want on your own, but he was correct  
23                 about the number of shots that were  
24                 fired. These were not leading questions.  
25                 And if you recall what leading questions

1 are, they are questions that suggest an  
2 answer.

3 so, the police were not saying,  
4 isn't it true that he parked here? Isn't  
5 it true that he did this? Isn't it true  
6 that he went there? Isn't it true that  
7 he fired three or four shots? All the  
8 words came from Mr. Gilbert's mouth in  
9 terms of specificity. Again, why what he  
10 said under oath was not true, that he  
11 just shot him in the head. Again, why  
12 what he said in court was not true? And  
13 then it goes on about the taping and so  
14 forth that I told you about.

15 In jury selection, Mr. Whalen asked  
16 a lot of questions about would you  
17 believe police, do they lie? And a lot  
18 was asked about police lying, and you all  
19 talked about that with him. And I really  
20 didn't understand where he was going with  
21 that at the time, because this isn't  
22 really a police case, so to speak. It's  
23 not a case where police involvement is  
24 that critical.

25 Now, if he wants to tell you that



1 Criminalist Glindmeyer is lying about the  
2 injuries to Mr. Davis's hands, that  
3 officer Glindmeyer thought he had got  
4 them by way of a fistfight. Well, I  
5 mean, certainly at the time, that's one  
6 of the things you're thinking about.  
7 There is injuries to your hands, maybe  
8 there was a fight, maybe this is part of  
9 the crime scene. I want to make sure  
10 that the hands are protected and somebody  
11 notices the hands. It turns out he was  
12 wrong. There wasn't -- there was a  
13 tussle, but the injuries were from a  
14 fall. But I wouldn't characterize that,  
15 the evidence shows is a lie that Officer  
16 Glindmeyer is trying to mislead you at  
17 all.

18 And as far as the spit, all I can  
19 think about, that there would be a  
20 controversy about these police officers  
21 telling you the age of the spit, that it  
22 was fresh. But Mr. Whalen, in his  
23 closing argument, again seemed to  
24 indicate that his client was there at the  
25 time of the murder. So, that really

1           obviates the need to determine the  
2           freshness of the spit, but certainly this  
3           has been -- the opinion about the spit  
4           isn't something new.

5                       If you remember, Officer Fusselman  
6           came into court, he's the first  
7           responding officer to the Victor Davis  
8           homicide. He got there within a few  
9           seconds. He gets there, and right away  
10          he notices the spit. He thought it was  
11          fresh. He thought that that's something  
12          that needs to be preserved, and he was  
13          hoping that another police or fire  
14          officer who's trying to save Victor  
15          Davis's life didn't put it there. This  
16          was done prior to Luke, anybody getting  
17          involved in the case. This is his  
18          opinion and what he said.

19                      Glindmeyer and Luke, the same way,  
20          they had no reason at the time to think  
21          it was fresh because they didn't know  
22          what his alibi would be that he wasn't  
23          even there, that he hadn't been there for  
24          12 hours. So, this isn't like something  
25          that has come at the last minute that

1           everybody thought this was important,  
2           it's fresh, like Detective Luke saying  
3           God, these firefighters or another  
4           uniformed cop must have spit right there  
5           by the body.

6                       So, not knowing what the defense  
7           would be, these are opinions that were  
8           reached at the time.

9                       Obviously there is a lot at stake  
10          in this case for both sides. This is an  
11          important case for Cincinnati law  
12          enforcement. You know a witness is  
13          killed, and I'm not saying that Brian  
14          Austin's life isn't important, certainly  
15          it is, but when you have actually got  
16          somebody that is going to step up, and  
17          you wonder where is it going to stop?  
18          Everybody is always saying they want  
19          Cincinnati crime curbed. They want it  
20          eradicated. They want people to come  
21          forward. There is Crimestoppers. There  
22          is Cash for Clues. There is all kind of  
23          programs. There is community  
24          involvement. Let's let the murders stop.

25                       well, finally when somebody comes

1 forward, like Victor Davis, that's why  
2 it's an important case for everybody, Mr.  
3 Jordan, the State, for you all to decide,  
4 because when a witness is gunned down in  
5 the street with impunity, then the  
6 shooter of Mr. Austin and the shooter of  
7 Victor Davis, who is this man, a father  
8 and son play the kind of games that they  
9 are playing and have been demonstrated in  
10 this courtroom, don't let this  
11 grade-school simplistic trick work on  
12 you.

13 We would ask you, as Ms. Shanahan  
14 says, to find Mr. Jordan guilty and see  
15 through his desperate and deliberate  
16 tactics to subvert justice, thank you.

17 THE COURT: Thank you. At this  
18 time, ladies and gentlemen of the jury,  
19 I'm going to give you your instructions.  
20 I want you to just listen right now  
21 because you will each have a copy, and,  
22 therefore, I do not want you to become  
23 distracted trying to memorize everything  
24 that I'm getting ready to tell you.

25 This case is the State of Ohio vs.

1 Ruben Jordan. Members of the jury: You  
2 have now heard the evidence and the  
3 arguments of counsel. The Court and the  
4 jury have separate functions. You decide  
5 the disputed facts and the Court provides  
6 the instructions of law. It is your  
7 sworn duty to accept these instructions  
8 and to apply the law as it is given to  
9 you.

10 You are not permitted to change the  
11 law nor to apply your own conception of  
12 what you think the law should be.

13 Indictment. That is a criminal case  
14 begins with a filing of an indictment.  
15 The indictment informs the defendant that  
16 he has been charged with an offense or  
17 offenses. The fact that it was filed may  
18 not be considered for any other purpose.  
19 The plea of not guilty is a denial of the  
20 charges and puts in issue all of the  
21 essential elements of each offense.

22 The burden of proof. The defendant  
23 is presumed innocent until his guilt is  
24 established by proof beyond a reasonable  
25 doubt. The defendant must be acquitted

1 unless the State produces evidence which  
2 convinces you beyond a reasonable doubt  
3 of every essential element of the  
4 offenses charged offenses charged in the  
5 indictment or of any lesser offense  
6 included within that indictment. And  
7 that you will be given instructions about  
8 all of that.

9 Reasonable doubt is present when  
10 the jurors, after they have carefully  
11 considered and compared all the evidence,  
12 cannot say they are firmly convinced of  
13 the truth of the charge or charges. It  
14 is a doubt based on reason and common  
15 sense. Reasonable doubt is not mere  
16 possible doubt, because everything  
17 relating to human affairs or depending on  
18 moral evidence is open to some possible  
19 or imaginary doubt. Proof beyond a  
20 reasonable doubt is proof of such  
21 character that an ordinary person would  
22 be willing to rely upon it in the most  
23 important matters of the person's own  
24 affairs.

25 what is evidence? Evidence is all

1 the testimony received from the  
2 witnesses, including depositions and the  
3 exhibits admitted during the trial and  
4 facts agreed to by counsel, and any facts  
5 which the court requires to you accept as  
6 true. Evidence may -- and you will get  
7 some of that also in a moment.

8 Evidence may be direct or  
9 circumstantial, or both. Direct evidence  
10 is the testimony given by a witness who  
11 has seen or heard the facts to which he  
12 or she testifies. If I say he or she, I  
13 mean both. It includes exhibits admitted  
14 into evidence during the trial. So  
15 exhibits admitted into evidence during  
16 the trial are considered to be direct  
17 evidence.

18 Circumstantial evidence is the  
19 proof of facts or circumstances by direct  
20 evidence from which you may infer -- you  
21 may reasonably infer other related or  
22 connected facts which naturally and  
23 logically flow according to the common  
24 experience of mankind. To infer or to  
25 make an inference is to reach a

1 reasonable conclusion of fact which you  
2 may, but are not required to make, from  
3 other facts which you find have been  
4 established by direct evidence. Whether  
5 an inference is made rests entirely upon  
6 you, each individual as jurors. Direct  
7 and circumstantial evidence are of equal  
8 weight.

9 The evidence does not include the  
10 indictment, the opening statements or  
11 closing arguments of counsel. The  
12 opening statements and closing arguments  
13 of counsel are designed to assist you,  
14 but they are not evidence.

15 Statements that were stricken by  
16 the Court or which you were instructed to  
17 disregard are not evidence and must be  
18 treated as though you never heard them.  
19 You must not speculate as to why the  
20 Court sustained the objection to any  
21 question or what the answer to such  
22 question might have been. You must not  
23 draw any inference or speculate on the  
24 truth of any suggestion included in a  
25 question that was not answered. As



1 previously instructed, the view of the  
2 premises is not evidence, but it may help  
3 you understand the evidence.

4 Credibility. You are the sole  
5 judges of the facts, the credibility of  
6 the witnesses and the weight of the  
7 evidence. To weigh the evidence, you  
8 must consider the credibility of the  
9 witnesses. You will apply the tests of  
10 truthfulness that you apply in your own  
11 daily lives. These tests include the  
12 appearance of each witness upon the  
13 stand; his or her manner of testifying;  
14 the reasonableness of the testimony; the  
15 opportunity he or she had to see, hear  
16 and know the things concerning which he  
17 or she has testified; his or her accuracy  
18 of memory, his or her frankness or lack  
19 of it, his or her intelligence, and his  
20 or her interests and bias, if any;  
21 together with all of the facts and  
22 circumstances surrounding the testimony.

23 Applying these tests, you will  
24 assign to the testimony of each witness  
25 such weight as you deem proper. You are

1 not required to believe the testimony of  
2 any witness simply because it is under  
3 oath. You may believe or disbelieve all  
4 or any part of the testimony of any  
5 witness. You should decide what  
6 testimony is worthy of belief and what  
7 testimony is not worthy of belief.

8 Eyewitness means a person who  
9 observes another person at or near the  
10 scene of an offense. Some things you may  
11 consider in weighing the testimony of an  
12 identifying witness are: The capacity of  
13 the witness, that is the age,  
14 intelligence, defective senses, if any,  
15 and the opportunity of the witness to  
16 observe. The witness's degree of  
17 attention at the time he or she observed  
18 the offender; the accuracy of the  
19 witness's prior description or  
20 identification, if any; whether the  
21 witness had observed the defendant in the  
22 past; the interval of time between the  
23 event and the identification and all  
24 surrounding circumstances under which the  
25 witness has identified the defendant.

1 Evidence was received that some  
2 witnesses had been convicted of a  
3 criminal offense. If you find that a  
4 witness was convicted of a criminal  
5 offense, you may consider that evidence  
6 solely for the purpose of testing the  
7 witness's credibility and the weight to  
8 be given that witness's testimony. It  
9 cannot be considered for any other  
10 purpose.

11 You heard a tape-recorded statement  
12 of Kareem Gilbert. This recorded  
13 statement was admitted for the sole  
14 purpose of impeaching the witness. The  
15 statement is not testimony and may only  
16 be used to evaluate the credibility of  
17 the witness.

18 The testimony of the defendant. It  
19 is not necessary that the defendant take  
20 the stand in his own defense. He has a  
21 constitutional right not to testify. The  
22 fact that he did not testify must not be  
23 considered for any purpose.

24 Expert witnesses. Definition.  
25 Generally a witness may not express an

1 opinion, however one who follows a  
2 special line of work may express their  
3 opinion because of his or her education,  
4 knowledge and experience. Such testimony  
5 is admitted for whatever assistance it  
6 may provide to help you to arrive at a  
7 just verdict.

8 Questions have been asked in which  
9 an expert witness was permitted to assume  
10 that certain facts were true, and to give  
11 an opinion based upon such assumption.  
12 You must determine whether the assumed  
13 facts upon which the expert based their  
14 opinion are true. If any assumed fact  
15 was not established, you will determine  
16 its effect upon the opinion of the  
17 expert.

18 As with other witnesses, upon you  
19 alone rests the duty of deciding what  
20 witness -- what weight should be given to  
21 the testimony of the expert. In  
22 determining its weight, you may take into  
23 consideration their skill, experience,  
24 knowledge, veracity, familiarity with the  
25 facts of this case, and the usual rules

1 for testing credibility and determining  
2 the weight to be given to the testimony.

3 stipulations have occurred in this  
4 matter. They've made several  
5 stipulations. They have stipulated that  
6 the Cincinnati Police collected Exhibit  
7 15, a buccal swab from the defendant,  
8 Ruben Jordan. Further proof of that fact  
9 is unnecessary. Further weighing of this  
10 fact is not necessary. The jury is  
11 instructed to accept that as proven.

12 The parties have stipulated that  
13 the defendant, Ruben Jordan, was indicted  
14 on May 24th, 2010. They have stipulated  
15 that Exhibit F is Kareem Gilbert's plea  
16 agreement. They have also stipulated to  
17 the prior convictions of the defendant,  
18 Ruben Jordan, for the following offenses  
19 in Hamilton County, Ohio, Court of Common  
20 Pleas. Possession of drugs on  
21 February 6th, 2004; preparation of  
22 marijuana for sale on December 14th,  
23 2000; illegal processing of drug  
24 documents on October 17th, 1995;  
25 aggravated trafficking of drugs on

1 March 19th, 1993; and drug abuse on May  
2 the 1st, 1994.

3 With regard to Count 2, a prior  
4 conviction is an element of the offense  
5 of having a weapon while under a  
6 disability. This stipulation was not  
7 made to prove the character of the  
8 defendant, but in order to show that the  
9 defendant acted in conformity with that  
10 character. And you may not consider it  
11 to prove the character of the defendant  
12 or to show that he acted in conformity  
13 with that character.

14 The definition of complicity.  
15 Complicity is an offense. Act in an  
16 offense. Complicity in an offense means  
17 the conduct of one who knowingly aids and  
18 abets another for the purpose of  
19 committing such an offense.

20 If you find beyond a reasonable  
21 doubt that Ruben Jordan purposely aided,  
22 helped, assisted, encouraged or directed  
23 himself with another in the commission of  
24 an offense, he is to be regarded as if he  
25 were the principal offender and is just

1 as guilty as if he had personally  
2 performed every act constituting the  
3 offense.

4 When two or more persons have a  
5 common purpose to commit a crime, and one  
6 does one part and a second performs  
7 another, those acting together are  
8 equally guilty of the crime; however, the  
9 mere association with one who perpetrates  
10 an unlawful act does not render a person  
11 a participant in the crime as long as his  
12 act are innocent.

13 Complicity applies to the firearm  
14 spec as well as the underlying criminal  
15 charges. So that there -- so that where  
16 one is acting in conformity with another  
17 in the commission of an offense with the  
18 use of a firearm, he is criminally  
19 responsible for the firearm regardless of  
20 whether he was the principal offender or  
21 an unarmed accomplice.

22 Exhibits. A number of exhibits and  
23 testimony related to them have been  
24 introduced. You may consider whether the  
25 exhibits are the same objects and in the

1 same condition as originally taken by the  
2 deputies or the police officers. You  
3 will determine what weight, if any, the  
4 exhibits should receive in light of all  
5 the evidence.

6 Alibi has been introduced here.  
7 The defendant claims that he was at some  
8 other place at the time the offense  
9 occurred. This is known as alibi. The  
10 word "alibi" means elsewhere or a  
11 different place. If the evidence fails  
12 to establish that the defendant was  
13 elsewhere, such failure does not create  
14 an inference that the defendant was  
15 present at the time when, and at the  
16 place where, an offense may have been  
17 committed.

18 If after consideration of the  
19 evidence of alibi, along with all the  
20 evidence, you are not convinced beyond a  
21 reasonable doubt that the defendant was  
22 present at the time in question, you must  
23 return a verdict of not guilty.

24 Count one, aggravated murder with  
25 specifications. The defendant, Ruben



1 Jordan, is charged with aggravated  
2 murder, in violation of Revised Code  
3 2903.01(A) of the Ohio Revised Code.  
4 Before you can find the defendant guilty,  
5 you must find that beyond a reasonable  
6 doubt that on or about the 31st of  
7 October, 2008, and in Hamilton County,  
8 Ohio, the defendant purposely, and with  
9 prior calculation and design, caused the  
10 death of Victor Davis.

11 Purposely. Purpose to cause the  
12 death of another is an essential element  
13 of the crime of aggravated murder. A  
14 person acts purposely when his specific  
15 intention to cause a certain result. It  
16 must be established in this case that at  
17 the time in question there was present in  
18 the mind of the defendant a specific  
19 intention to cause the death of Victor  
20 Davis. Purpose is a decision of the mind  
21 to do an act with a conscious objective  
22 of producing a certain result or engaging  
23 in specific conduct. To do an act  
24 purposely is to do it intentionally and  
25 not accidentally.

1                   Purpose and intent mean the same  
2                   thing. The purpose with which a person  
3                   does an act is known only to himself  
4                   unless he expresses it to others or  
5                   indicates it by his conduct. The purpose  
6                   with which a person does an act or brings  
7                   about a result is determined from the  
8                   manner in which it is done, the means or  
9                   weapon used, and all the facts and  
10                  circumstances in evidence.

11                  Inference. Use of a deadly weapon.  
12                  You may infer a purpose to cause the  
13                  death of another with a natural or  
14                  probable consequences of the defendant's  
15                  act is to produce death, in light of all  
16                  the surrounding circumstances. Such  
17                  circumstances include the weapon used and  
18                  its ability to destroy life. If you find  
19                  that the defendant used a deadly weapon  
20                  against another in a manner calculated to  
21                  destroy life, the purpose to cause death  
22                  may be, but is not required to be,  
23                  inferred from the use of the deadly  
24                  weapon. Whether an inference is made  
25                  rests entirely with you.

1                   Prior calculation and design means  
2                   that the purpose to cause a death was  
3                   reached by definite process of reasoning  
4                   in advance of the homicide, which process  
5                   of reasoning must have included a mental  
6                   plan involving studied consideration of  
7                   the method and the means or instrument  
8                   with which to cause the death. To  
9                   constitute prior calculation, there must  
10                  have been sufficient time and opportunity  
11                  for the planning of an act of homicide,  
12                  and the circumstances surrounding the  
13                  homicide must show a scheme designed to  
14                  carry out the calculated decision to  
15                  cause the death. No definite period of  
16                  time must elapse and no particular amount  
17                  of consideration must be given. But  
18                  acting on the spur of the moment or after  
19                  momentary consideration of the purpose to  
20                  cause the death is not sufficient.

21                  Cause is an essential element of  
22                  the offense of aggravated murder. Cause  
23                  is an act which directly produces the  
24                  death of another and without which it  
25                  would not have occurred.

1           Deadly weapon means any instrument,  
2           device or thing capable of inflicting  
3           death and designed or specifically  
4           adapted for use as a weapon, or  
5           possessed, carried, or used as a weapon.

6           Capable of deadly weapon -- I'm  
7           sorry. Capability of deadly weapon. A  
8           deadly weapon is any instrument, device  
9           or thing which has two characteristics.  
10          The first characteristic is that it is  
11          capable of inflicting or causing death.  
12          The second characteristic is in the  
13          alternative when the instrument, device  
14          or thing was designed or specifically  
15          adapted for use as a weapon, or it was  
16          possessed, carried or used in this case  
17          as a weapon.

18          These are questions of fact for you  
19          to decide. The lesser included offense  
20          to Count 1 is murder. Under 29 --  
21          Revised Code 2903.02, murder is a lesser  
22          included offense of aggravated murder.

23          Before you can find the defendant  
24          guilty of murder, you must find beyond a  
25          reasonable doubt that on or about the

1           31st day of October, 2008, and in  
2           Hamilton County, Ohio the defendant  
3           purposely caused the death of Victor  
4           Davis. The offense of murder is  
5           distinguished from aggravated by the  
6           absence or failure to prove prior  
7           calculation and design.

8                   Findings on Count 1. If you find  
9           that the State failed to prove beyond a  
10          reasonable doubt any one of the essential  
11          elements of the offense of aggravated  
12          murder as charged in Count 1 of the  
13          indictment, then your verdict must be not  
14          guilty as to such charge according to  
15          your findings.

16                   Guilty as charged. If you find  
17          that the State proved beyond a reasonable  
18          doubt all the essential elements of the  
19          offense of aggravated murder, your  
20          verdict must be guilty as charged.

21                   Guilty of a lesser included  
22          offense. However, if you find that the  
23          State failed to prove beyond a reasonable  
24          doubt any one of the essential elements  
25          of aggravated murder, or you're unable to

1       agree on a verdict, then your verdict  
2       must be not guilty of that offense. And  
3       in that event you will continue your  
4       deliberations to decide whether the State  
5       has proved beyond a reasonable doubt all  
6       the essential elements of the lesser  
7       included offense of murder.

8               Lesser included offense. If the  
9       evidence warrants it, you may find the  
10      defendant guilty of an offense lesser  
11      than that charged in the indictment;  
12      however, notwithstanding that right, it  
13      is your duty to accept the law as given  
14      to you by the Court, and if the facts and  
15      the law warrant a conviction of the  
16      offense charged in the indictment, namely  
17      aggravated murder, then it is your duty  
18      to make such a finding uninfluenced by  
19      your power to find a lesser offenses.  
20      This provision is not designed to relieve  
21      you from the performance of an unpleasant  
22      duty, it is included to prevent failure  
23      of justice if the evidence failed to  
24      prove the original charge, but does  
25      justify a verdict for the lesser offense.

1                   There is Specification 1 to Count  
2           1. If your verdict is guilty of  
3           aggravated murder or murder, you will  
4           separately decide beyond a reasonable  
5           doubt if the defendant, Ruben Jordan, had  
6           on about his person or under his control  
7           a firearm while committing the offense of  
8           aggravated murder, or murder, and  
9           displayed the firearm, brandished the  
10          firearm, indicated that he possessed a  
11          firearm, or used it to facilitate the  
12          offense of aggravated murder or murder.  
13          If your verdict is not guilty to murder  
14          or aggravated murder, you will not  
15          consider this specification.

16                   Firearm means any deadly weapon  
17          capable of expelling or propelling one or  
18          more projectiles by an action of an  
19          explosive or combustible propellant.

20                   Firearm includes an unloaded  
21          firearm and any firearm which is  
22          inoperable which can be readily rendered  
23          operable.

24                   Count 2 is having a weapon while  
25          under disability under Ohio Revised Code

2923.13(A)(3). The defendant, Ruben Jordan, is charged with having weapons while under a disability, in violation of 2923.13. Before you can find the defendant guilty, you must find beyond a reasonable doubt that on or about the 31st day of October, 2008, and in Hamilton County, Ohio, the defendant, Ruben Jordan, knowingly acquired, had, carried or used a firearm, to wit: a firearm, and at the time the defendant knew he was under indictment for or had been convicted of an offense involving the illegal possession of, sale of, use of, administration of, distribution or trafficking in any drug of abuse, to wit: possession of drugs in Hamilton County, Ohio, Court of Common Pleas, Case Number 80339977 on October 6, 2004, and preparation of marijuana for sale in Hamilton County, Ohio, Court of Common Pleas, Case Number B006899, on December 14th, 2000; and illegal possession of drug documents in Hamilton County, Ohio, Court of Common Pleas, Case



1 B955989 on October 17th, 1995; and  
2 aggravated trafficking in drugs in  
3 Hamilton County, Ohio, Court of Common  
4 Pleas, Case Number B929170 on October 19,  
5 1993; and drug abuse in Hamilton County,  
6 Ohio, Court of Common Pleas, Case Number  
7 13911528 on May 1st, 1991; and at the  
8 time the defendant had not been relieved  
9 from such disability.

10 All applicable definitions and all  
11 the essentially elements of the offense  
12 of having a weapon while under a  
13 disability are described above.

14 Findings as to Count 2. If you  
15 find that the State failed to prove  
16 beyond a reasonable doubt any one of the  
17 essential elements of the offense of  
18 having a weapon while under a disability  
19 as charged in Count 2 of the indictment,  
20 then your verdict must be not guilty as  
21 to such offense according to your  
22 findings.

23 If you find that the State proved  
24 beyond a reasonable doubt all the  
25 essential elements of the offense of

1           having a weapon while under disability as  
2           charged in Count 2 of the indictment,  
3           your verdict must be guilty as to such  
4           offense according to your finding.

5                     There are multiple counts here.  
6           So, if you find that the State proved  
7           beyond a reasonable doubt all the  
8           elements of any one or more of the  
9           offenses charged in the separate counts  
10          in the indictment, your verdict must be  
11          guilty as to such offense or offenses  
12          according to your findings.

13                    Not guilty. If you find that the  
14          State failed to prove beyond a reasonable  
15          doubt any one of the essential elements  
16          of any one or more of the offenses  
17          charged in the separate counts in your  
18          indictment, your verdict must be not  
19          guilty as to such offense or offenses  
20          according to your findings.

21                    Consider the counts and  
22          specifications separately. The charges  
23          set forth in each count in the indictment  
24          constitute a separate and distinct  
25          matter. You must consider each count and

1 the evidence applicable to each  
2 count separately, and you must state your  
3 finding as to each count uninfluenced by  
4 your verdict as to any other count.

5 The defendant may be found guilty  
6 or not guilty of any one or all of the  
7 offenses charged. The indictment charges  
8 that the offenses took place on or about  
9 October 31st, 2008. It is not necessary  
10 that the State prove that the offenses  
11 were committed on the exact days as  
12 charged in the indictment. It is  
13 sufficient to prove that the offenses  
14 took place on a date reasonably near the  
15 date claimed.

16 Before you can decide whether the  
17 State of Ohio has proved beyond  
18 reasonable doubt all of the essential  
19 elements of the offenses with which the  
20 defendant is charged, you must first  
21 decide whether this is the correct --  
22 counsel, can we stipulate to that? Mr.  
23 Whalen?

24 MR. WHALEN: Yes, Your Honor.

25 THE COURT: So, the jury does not

1           have to consider whether these offenses  
2           occurred in Hamilton County, because the  
3           parties agree. Normally, venue is  
4           something that the jury may have to, if  
5           it's disputed. That it is not disputed  
6           here. So, this did take place in  
7           Hamilton County.

8                   The verdict forms you will have  
9           with you in the jury room include the  
10          following, I'm going to read each of  
11          those separately now. You will have with  
12          you one, two, three, four, five sheets of  
13          paper relating to the verdicts.

14                  There is one verdict form that says  
15          guilty as to Count 1, aggravated murder.  
16          We, the jury, find the defendant, Ruben  
17          Jordan, guilty of aggravated murder and  
18          there are 12 signatures, and the  
19          foreperson has a special place to sign.

20                  If you find the defendant guilty of  
21          aggravated murder, continue to the  
22          verdict form for Specification 1.  
23          Specification 1 states, we, the jury,  
24          find the defendant, Ruben Jordan, guilty  
25          of the Specification to Count 1,

1           aggravated murder, or the lesser included  
2           offense of murder.

3           There is a separate form for guilty  
4           as to Count 1, lesser included offense of  
5           murder. We, the jury, find the  
6           defendant, Ruben Jordan, not guilty of  
7           aggravated murder, and guilty of murder,  
8           a lesser included offense of aggravated  
9           murder.

10           If you find the defendant guilty of  
11           murder, continue to the verdict form for  
12           specification 1. I just read that to  
13           you.

14           Counsel, I believe that applies to  
15           both of them, correct?

16           MR. TIEGER: Yes, Your Honor.

17           THE COURT: In addition to that, it  
18           does have the 12 lines for your  
19           signatures and the place for the  
20           foreperson.

21           Verdict form not guilty as to Count  
22           1, aggravated murder or murder. We, the  
23           jury, find the defendant, Ruben Jordan,  
24           not guilty of Count 1, aggravated murder  
25           and not guilty of the lesser included

1 offense of murder. It has the 12  
2 signature lines and a place for the  
3 foreperson.

4 Count 2. We, the jury, find the  
5 defendant, Ruben Jordan, guilty or not  
6 guilty of having a weapon while under a  
7 disability. And should there not be a  
8 verdict form for we, the jury, find the  
9 defendant guilty of murder? I didn't --

10 MR. TIEGER: Judge, I think that  
11 was the second one that you read.

12 THE COURT: As long as it was  
13 covered.

14 MR. TIEGER: I believe it was,  
15 Judge.

16 THE COURT: All the possibilities  
17 have been covered, and you will have that  
18 with you in your jury room. I will  
19 explain to you who is to take care of  
20 that and handle that.

21 When you have reached a verdict,  
22 you will complete the forms that  
23 correspond to your decision and sign the  
24 verdict forms in ink.

25 Punishment. You may not discuss or

1           consider the subject of punishment. In  
2           the event you find the defendant guilty,  
3           the duty to determine the punishment is  
4           placed by law upon the Court. We are  
5           almost finished.

6                     Just verdict. You must not be  
7           influenced by any consideration of  
8           sympathy or prejudice. It is your duty  
9           to carefully weigh the evidence, to  
10          decide all disputed questions of fact, to  
11          apply the instructions of the Court to  
12          your findings, and to render your verdict  
13          accordingly. In fulfilling your duty,  
14          your efforts must be to arrive at a just  
15          verdict. Consider all the evidence and  
16          make your finding with intelligence and  
17          impartiality, and without bias, sympathy  
18          or prejudice so that the State of Ohio  
19          and the defendants -- defendant will feel  
20          their case was fairly and impartially  
21          tried.

22                    If during the course of the trial  
23          the Court said or did anything that you  
24          consider an indication of the Court's  
25          view on the facts, you are instructed to

1           disregard it.

2                   Initial jury room conduct. The  
3           Court has given you the instructions on  
4           the law applicable in this case. I will  
5           now instruct you on how to conduct your  
6           deliberations and prepare your verdict.  
7           When you go to the jury room, your first  
8           function will be to select one of your  
9           number to serve as foreperson. The  
10          person you select to preside over your  
11          deliberations does not have any greater  
12          power, nor does that person's vote have  
13          any more importance than others. He or  
14          she serves the purpose of helping you  
15          conduct your deliberations in an orderly  
16          manner, and to give each of you the  
17          opportunity to express your opinion. One  
18          additional duty of the foreperson is to  
19          see to it that the verdict forms and any  
20          exhibits are turned to the court after  
21          you have reached a verdict.

22                   Your initial conduct upon entering  
23          the jury room is a matter of importance.  
24          It is not wise immediately to express a  
25          determination, to insist upon a certain



1 verdict, because if your sense of pride  
2 is aroused, you may hesitate to change  
3 your position even if you later decide  
4 you are wrong.

5 Consult with one other, consider  
6 each others' views, and deliberate with  
7 the objective of receiving an agreement  
8 if you can do so without disturbing your  
9 individual judgment. Each of you must  
10 decide this case for yourself. But you  
11 should do so only after a discussion and  
12 consideration of the case with your  
13 fellow jurors. Do not hesitate to change  
14 an opinion if convinced that it is wrong;  
15 however, you should not surrender honest  
16 convictions in order to be congenial or  
17 to reach a verdict solely because of the  
18 opinion of other jurors.

19 Questions. If during your  
20 deliberations you have a question, it  
21 should be discussed in the privacy of  
22 your jury room. It should not reflect  
23 the status of your deliberations, meaning  
24 it should not be that we are -- we have  
25 got six -- we are deadlocked six to six,

1 or we got nine going one way and three  
2 going the other way. That's an improper  
3 thing to put in your question. It should  
4 be reduced to writing, so that there will  
5 be no misunderstanding as to what you  
6 request, and it should then be delivered  
7 to the bailiff who will submit it to the  
8 Court, and the foreperson will do that,  
9 will write the question and serve it to  
10 the bailiff.

11 It may be difficult to remember all  
12 the evidence or the law. If you disagree  
13 as to the evidence, as to the law, the  
14 Court may under certain circumstances  
15 furnish such information. Do not make a  
16 request at this moment.

17 If after you return to the jury  
18 room, you require such information, the  
19 foreperson should reduce the request to  
20 writing indicating specifically what you  
21 request. Such communication must be  
22 delivered to the bailiff who will submit  
23 it to the Court.

24 Also, you have engaged in note  
25 taking. Some of you decided to take

1 notes. All notes are confidential and  
2 for the consideration of the jury only.  
3 Each note taker will leave that note with  
4 the bailiff during recesses and until  
5 deliberations begin. So, at that time  
6 you will be allowed to take your notes to  
7 the jury room. All notes will be  
8 returned to the bailiff for destruction  
9 at the time the jury is discharged.

10 Also, you should be -- I should  
11 tell you that your notes are not to be  
12 used as though they were fact, and no  
13 juror is required to believe or  
14 disbelieve your notes. They're for your  
15 purposes only and for purposes of  
16 discussion.

17 A juror selected as an alternate is  
18 not permitted to participate in a jury's  
19 deliberation, for the three of you who  
20 have sat there patiently. But, there may  
21 be an occasion -- we have not -- since  
22 the verdict has not been reached, and  
23 because this may take several days, we're  
24 not sure, that means that one of you may  
25 be pressed to serve as jurors,

1           deliberating jurors.

2           So, you will be called in if one of  
3           the jurors is unable to complete his or  
4           her service due to illness or some other  
5           misfortune or because there is -- some of  
6           you have indicated that you cannot remain  
7           past Wednesday. The alternate jurors  
8           will remain in the courthouse under the  
9           supervision of the bailiff, but will not  
10          accompany the jury to the jury room or  
11          participate in deliberations unless  
12          directed by the Court.

13          The alternate jurors continue to be  
14          part of the jury panel while the jury is  
15          deliberating, until the jury has reached  
16          a verdict. The alternate jurors cannot  
17          discuss the case with anyone or disclose  
18          to anyone how they would have voted.

19          After the jury has returned its  
20          verdict and the verdict is announced in  
21          open court, the alternate jurors will be  
22          released from all restrictions. So,  
23          alternate jurors, it will not be  
24          necessary for you to serve any further.  
25          And you are not to discuss this case or

1 tell anyone how you would have voted  
2 until the jury has reached -- has  
3 returned a verdict.

4 On behalf of the public and  
5 parties, the Court expresses appreciation  
6 for your service in performing this most  
7 important function, and I think you may  
8 be on standby. So, I'm going to suggest  
9 they be released to the Jury Commission,  
10 and they have agreed that they will not  
11 discuss this case.

12 MR. TIEGER: Judge, I thought they  
13 would have to be, not necessarily  
14 sequestered, but kept together. I don't  
15 know what room the Court would have for  
16 them, but just not to discuss the case.  
17 But I don't know if they can -- certainly  
18 want to make it as comfortable for them  
19 by way of --

20 THE COURT: So, you object to --

21 MR. TIEGER: -- way of magazines or  
22 books or something.

23 THE COURT: So, that means that  
24 they can not return to the Jury  
25 Commission office. Normally kept

1 separated from the Jury Commission  
2 office.

3 MR. TIEGER: I'm sorry, Judge?

4 THE COURT: Keep them separate from  
5 the Jury Commission office?

6 MR. TIEGER: If they could just  
7 find a room somewhere for them, and  
8 certainly -- yeah.

9 THE COURT: They might even have a  
10 TV in there. We'll take care of that.  
11 At this time, the Court will place in  
12 your possession the exhibits and the  
13 verdict forms. The foreperson will  
14 retain possession of these records,  
15 including the verdicts and return them to  
16 the courtroom. The foreperson will see  
17 that your discussions are orderly and  
18 that each juror has the opportunity to  
19 discuss the case and to cast his or her  
20 vote. Otherwise, the authority of the  
21 foreperson is the same as any other  
22 juror.

23 Until your verdict is announced in  
24 open court, you are not to disclose to  
25 anyone, that includes the bailiff, the

1 Judge, certainly the parties and the  
2 litigants and participants, to anyone  
3 else, the status of your deliberations or  
4 the nature of your verdict.

5 After you have retired, select a  
6 foreperson. And whenever all 12 jurors  
7 agree upon a verdict, you will sign the  
8 verdict in ink and advise the bailiff.  
9 You will then be returned to your  
10 courtroom. I think it's appropriate at  
11 this time to -- maybe they can select a  
12 foreperson, or should -- Counsel, do you  
13 think they should be going to lunch?

14 MR. TIEGER: Judge, whatever is  
15 comfortable for them.

16 THE COURT: I'm going to ask the  
17 jury. Would you prefer to go to lunch  
18 now and come back and choose a  
19 foreperson? All right. Some saying yes  
20 adamantly. At this time, you will return  
21 to the courtroom then at 12:30. You are  
22 released now for lunch.

23 Remember your admonition that you  
24 are not to discuss this case among  
25 yourselves at lunch, as tempting as it

1           may be, and you understand what the  
2           admonition is. Okay. All right. At  
3           this time we'll rise for the jury.  
4           They're going to go to lunch.

5                     (The jury leaving the courtroom at  
6           11:30 a.m.)

7                     THE COURT: Exhibits and  
8           stipulations, all this will remain in the  
9           courtroom until they come back at 12:30,  
10          and then we'll take that in to them.

11                    Counsel, anything else?

12                    MR. TIEGER: No, Judge.

13                    MR. WHALEN: Your Honor, the  
14          instructions that the Court will give the  
15          jury during the day, including when they  
16          are gone for the evening, my client will  
17          waive his presence while you give them  
18          the instructions. I will be here.

19                    THE COURT: Instructions when?

20                    MR. WHALEN: At the end of day.

21                    THE COURT: At the end of today.  
22          Okay.

23                    MR. WHALEN: Or when they go to  
24          lunch. I told him if they have a  
25          question or reach a verdict --



1 THE COURT: All right then. So,  
2 you're waiving the defendant's presence?

3 MR. TIEGER: I guess our point  
4 would be that we don't -- and maybe it's  
5 the same thing as Bill is saying, but  
6 Megan and I don't need to be here. For  
7 instance, when they come back from lunch  
8 they can return to the jury room at 12:30  
9 without us being here. And if they don't  
10 get a verdict today -- I mean, I don't  
11 have a problem if the Court releases them  
12 with the admonishment.

13 THE COURT: I'll tell you what I  
14 will do. I'm going to reread, because of  
15 the nature of this charge, I'm going to  
16 read the admonitions again in full.

17 MR. TIEGER: And if you want us  
18 here, we'll be here, but --

19 THE COURT: No. I mean, I'll let  
20 them know you have waived your  
21 appearance.

22 MR. WHALEN: All right.

23 MS. SHANAHAN: Your Honor, a couple  
24 of things. And just with anybody's  
25 schedules, just a thought, because we do

1           have some jurors with time constraints.  
2           Can we perhaps let them go as late as  
3           they want, within reason deliberating  
4           today? I mean, like not cut them off at  
5           3:30 or 4?

6           THE COURT: I think five is  
7           reasonable, usually.

8           MR. TIEGER: Five is fine.

9           THE COURT: 5:00.

10          MS. SHANAHAN: Rather than cut them  
11          off and send them away early.

12          THE COURT: Let them know we are  
13          going to -- they can deliberate until  
14          five.

15          MR. TIEGER: Or just don't say  
16          anything and maybe at quarter till, if  
17          they are still here at 4:45, say unless  
18          you're close, we are going to cut you  
19          loose for the day in a few minutes.

20          THE COURT: All right. I can do  
21          that, too.

22          MS. SHANAHAN: Page 11, one thing I  
23          would want to add. Under murder, the  
24          second line. The offense murder is  
25          distinguished from aggravated. You just

1 have plugged in murder. It doesn't say  
2 aggravated what. And then, similarly, on  
3 Page 12 -- you ready, Scott?

4 THE COURT: Page 12.

5 MR. BRENNER: I didn't see where it  
6 was on 11.

7 MS. SHANAHAN: Page 11 at the  
8 bottom of murder.

9 THE COURT: Definition -- last  
10 sentence of murder.

11 MR. TIEGER: She wrote it in,  
12 Scott.

13 MR. BRENNER: Okay.

14 MS. SHANAHAN: And then on Page 12,  
15 the third line from the bottom, if your  
16 verdict is not guilty, I think we should  
17 plug in aggravated murder or murder, you  
18 will not consider the specification.  
19 It's just for clarification purposes for  
20 them.

21 MR. BRENNER: Okay.

22 THE COURT: I don't object to that.

23 MR. TIEGER: We are good then,  
24 Judge.

25 THE COURT: Okay. Fine.

1                   MR. WHALEN: Your Honor, can we  
2                   come back in chambers for a moment?

3                   (Luncheon recess.)  
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1 AFTERNOON SESSION January 24, 2011  
2 (The jury entering the courtroom at  
3 3:30 p.m.)

4 THE COURT: You may all be seated.  
5 Thank you. And will the foreperson  
6 please stand, okay. And this is on the  
7 matter of State vs. Ruben Jordan, Case  
8 Number B-003262. And, ma'am, state your  
9 name.

10 JUROR MESSERSCHIMTT: Beverly  
11 Messerschmitt.

12 THE COURT: And you did submit this  
13 question, these three questions to the  
14 Court?

15 JUROR MESSERSCHIMTT: Yes, I did.

16 THE COURT: As to the first  
17 question, if we find Ruben Jordan guilty  
18 of aggravated murder, can we find him not  
19 guilty on Specification 1 to Count 1?  
20 And the answer to that is yes.

21 will this discredit issue one? The  
22 answer to that is no. The third question  
23 is: Does it matter who shot the gun?  
24 And the answer to that is to read and  
25 follow the instructions on complicity.

1                   And with that, I will relieve the  
2                   jury so you can continue to deliberate.  
3                   Thank you.

4                   (The jury leaving the courtroom at  
5                   3:31 p.m.)

6                   (Jury deliberating.)

7                   THE COURT: We ready to bring in  
8                   the jury?

9                   MR. WHALEN: Yes, Your Honor.

10                  THE COURT: Counsels, do you object  
11                  to the alternates who have been separated  
12                  sit in the usual seats?

13                  MR. TIEGER: That's fine, Judge.

14                  THE COURT: Because they have to be  
15                  separated -- they cannot be released  
16                  until the verdict is read in open court.

17                  MR. TIEGER: Yes, Judge. I was  
18                  hoping we wouldn't forget about them.

19                  THE COURT: All right. Then, so  
20                  let's bring the jury in.

21                  (The jury entering the courtroom at  
22                  4:12 p.m.)

23                  THE COURT: Thank you. You may all  
24                  be seated. And to the foreman, please  
25                  stand, and has the jury reached a

1 verdict?

2 JUROR MESSERSCHIMTT: Yes, we have,  
3 Your Honor.

4 THE COURT: All right. I'm going  
5 to pass this back to the foremen and let  
6 her read the verdict in open court.

7 JUROR MESSERSCHIMTT: We, the jury,  
8 find the defendant, Ruben Jordan, guilty  
9 of aggravated murder. We, the jury, find  
10 the defendant, Ruben Jordan, guilty of a  
11 specification to Count 1, aggravated  
12 murder or lesser included offense of  
13 murder. We, the jury, find the  
14 defendant, Ruben Jordan, guilty of Count  
15 2, having weapons under disability.

16 THE COURT: All right. Thank you.  
17 You may be seated. Would you like to  
18 poll the jury, Counsel?

19 MR. WHALEN: Yes, Your Honor.

20 THE COURT: All right. I need,  
21 please, the list of the names. I know  
22 that Juror Number 1 --

23 MR. TIEGER: Judge, I think it is  
24 essentially just a short statement that  
25 you would read. You heard the verdict

1 read, is that your true and accurate --

2 THE COURT: Right. I'm going to do  
3 that. Just a second.

4 MR. TIEGER: You could refer to  
5 them by Juror Number 1, 2 and so forth  
6 instead of by name.

7 THE COURT: Having heard that jury  
8 verdict, I would like to ask Jury Number  
9 1, is that your -- is that your decision,  
10 your verdict?

11 JUROR OBST: Yes.

12 THE COURT: Juror number 2?

13 JUROR MCKINNEY: Yes.

14 THE COURT: Juror 3?

15 JUROR MESSERSCHIMTT: Yes.

16 THE COURT: Juror 4?

17 JUROR KEMPER: Yes.

18 THE COURT: Juror Number 5?

19 JUROR SHELTON: Yes.

20 THE COURT: Juror Number 6?

21 JUROR FITZGERALD: Yes.

22 THE COURT: Juror 7?

23 JUROR CISKO: Yes.

24 THE COURT: Juror 8?

25 JUROR COFFMAN: Yes.



1 THE COURT: Jury Number 9?

2 JUROR BURCK: Yes.

3 THE COURT: Juror 10?

4 JUROR RICKETTS: Yes.

5 THE COURT: Juror Number 11?

6 JUROR BESSEY: Yes.

7 THE COURT: Juror Number 12?

8 PROSPECTIVE JUROR 12:

9 JUROR BURKE: Yes.

10 THE COURT: Thank you for the  
11 alternates, and thank you for the jury  
12 for your service here today.

13 Many times -- you are released from  
14 the obligation to not talk to anyone you  
15 want to speak to about this matter. Many  
16 times attorneys would like for you to  
17 remain, because it's for them a learning  
18 experience, and so you are free to leave,  
19 though you don't have to. We want to  
20 thank and excuse the alternates also who  
21 remain in this matter.

22 This matter is adjourned. Jury may  
23 rise.

24 (The jury leaving the courtroom at  
25 4:15 p.m.)

1 THE COURT: You may be seated.

2 Counsel, at this time there will be a  
3 date for sentencing, or --

4 MR. WHALEN: We set a date for  
5 sentencing.

6 THE COURT: Yes. It does not  
7 need -- did you want to prepare anything  
8 in mitigation of that sentence?

9 MR. WHALEN: I do, yeah, but I  
10 guess --

11 THE COURT: How long did you --

12 MR. WHALEN: There has to be a  
13 presentence investigation.

14 MR. TIEGER: I know. There  
15 probably should be a victim impact  
16 statement as well. I think two weeks or  
17 so should be fine.

18 THE COURT: If they can do that.  
19 I'm going to say three.

20 MR. TIEGER: Okay.

21 THE COURT: Three weeks. Do you  
22 want this? All right. So, what's that  
23 date? Dee-Dee, get the date, please.  
24 Did you get a date?

25 MR. WHALEN: Yes.

1 THE COURT: All right.

2 MS. SMITH: February 15th.

3 MR. WHALEN: That's fine.

4 THE COURT: All right.

5 MR. TIEGER: Judge, I'm assuming  
6 the defendant would be remanded without  
7 bond?

8 THE COURT: He is remanded without  
9 bond pending sentencing. And at this  
10 time we are adjourned, are we not? That  
11 takes care of that.

12 (Proceedings continued for  
13 sentencing until February 15, 2011.)  
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## 1 CERTIFICATE

2 I, SHERI D. RENKEN, RPR, the  
3 undersigned, an Official Court Reporter for the  
4 Hamilton County Court of Common Pleas, do hereby  
5 certify that at the same time and place stated  
6 herein, I recorded in stenotype and thereafter  
7 transcribed the within 985, and that the  
8 foregoing Transcript of Proceedings is a true,  
9 complete, and accurate transcript of my said  
10 stenotype notes.

11 IN WITNESS WHEREOF, I hereunto set my  
12 hand this 15th day of January, 2012.

13  
14  
15 \_\_\_\_\_  
16 SHERI D. RENKEN, RPR  
17 Official Court Reporter  
18 Court of Common Pleas  
19 Hamilton County, Ohio  
20  
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24  
25